

An Investigation of the Concept of State
Terrorism.

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To my mam and dad who have had to put up with too much for too long.

Abstract.

Despite claims that state terrorism has been more of a problem than the insurgent variety, the evidence provided by both a content analysis of bibliographies on the topic of terrorism and the opinions of a great number of academics suggests that there is a far smaller amount of academic literature on state terrorism than there is on insurgency terrorism. In addition it has been noted that the literature on state terrorism, like that on terrorism generally, suffers from a lack of work on the definition of the term. Whilst it is difficult to think of any author who has methodically applied a definition to the actions of a particular actor in order to assess whether each constitutes an act of terrorism.

This thesis attempts to address each of these issues. However before doing either of these things it attempts to show that the suggested reasons as to why the State cannot commit acts of terrorism can be at least questioned, whilst simultaneously showing that some authors believe that state terrorism has produced far more victims and than the sub-state variety. Then after revealing the explanations for academia's neglect of state terrorism the thesis investigates the notion of (sub-state) terrorism in order to identify its core meaning, before attempting to incorporate this into a 'comprehensive' definition of terrorism which would enable the political analyst to identify acts of state terrorism committed within the area of the state's jurisdiction and abroad.

This definition, along with other definitions of terrorism taken from both the literature and legislation, are then tested by being applied to the 'counter-terrorist' activities of Israel, from which concluding comments on each and the general notion are made. The decision to concentrate solely upon counter-terrorist actions can also be seen to be addressing a gap in the literature, as can the choice of a Western state. The application of various definitions of state terrorism to the counter-terrorist actions of Israel within Israel, the administered West Bank and abroad, therefore means that this area provides a novel testing ground for any definition.

By examining the issue of state terrorism the thesis aims to raise, if not answer several important questions and issues surrounding the concept of state terrorism. In addition to illustrating the problems facing the production of any definition of the word 'terrorism' such an examination will hopefully illustrate the problems of applying any definition of terrorism. Finally the thesis aims to further the cause of knowledge by accurately describing the legalities of various aspects of Israel's counter-terrorist policies since Israel took over the administration of the West Bank in 1967.

As well as using the existing literature this thesis contains both the quantitative and qualitative replies of 120 academics to a pointed questionnaire on the topic. Many of the results of this are scattered throughout the conceptual parts of the thesis including this introductory chapter, and all the quantifiable results and the sampling technique are described in Appendix A.

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Part 1

An Investigation of the Concept of State Terrorism.

"...it is perhaps worth giving a word of warning that the results of a conceptual inquiry sometimes seem disappointingly meagre. The clarification of concepts is like cleaning the house. When you have cleaned the house, there is not much to be seen for your work. You have not acquired any new possessions, though you will have thrown out some things that are not wanted and are just a nuisance. What you will have at the end of it is a tidier house, in which you can move around more easily and in which you can find things when you need them."

D. D. Raphael.¹

"Rigorous or broad, rigid or sloppy, definitions are in themselves and important discursive practise of the terrorism industry. Often they appear to be yet another weapon in the vast arsenal of counter-terrorism, aiming to re-establish order and meaning in international relations practice and discourse at a time when both are undergoing extensive and intensive assaults".

J. Der Derian.²

¹ Raphael D.D. *Problems of Political Philosophy* (2nd.ed. Macmillan Basingstoke.1990.). p20. He goes on to say, "The analogy is apt in another respect also. Cleaning the house is not a job that can be done once and for all. You have to do it every week" p20.

² Der Derian J. *Anti - Diplomacy: Spies, Terror, Speed and War*. (Blackwell. Oxford. 1992). p81.

Chapter 1.

Introduction.

"It can be argued - and there are good reasons for it - that state terrorism is the main terrorist problem in the world".

A.P. Schmid and J. de Graaf.³

The Neglect of State Terrorism.

The decision to investigate the concept of state terrorism can be traced to this author's reading on terrorism for a Master's degree course⁴.

³ Schmid A.P. and De Graaf J. *Violence as Communication*. (SAGE. London.1982.). p2. Unfortunately they do not explain them.

⁴ An altogether separate reason for studying the terrorism of those in power is that it might actually contribute to the study of 'non-state' terrorism. Wilkinson, for example wrote, "some of the best historical case-studies of the use of factional terrorism as a weapon vividly demonstrate how state violence often helps to provoke and fuel the violence of terrorist movements" Wilkinson P. 'Can A State Be Terrorist ?'. *International Affairs*. Vol. 57.(3). Summer 1981. pp 467-472. p467. More specifically Crelinsten noted that the main problem with the existing truncated view of terrorism was that it precludes the possibility of comparative analysis. Crelinsten R.D. 'Terrorism as Political Communication: The Relationship between Controller and Controlled' in Wilkinson P. and Stewart A.M. *Contemporary Research on Terrorism*. (Aberdeen University Press. Aberdeen. 1987.). pp3-21. p4. Whilst Maxwell Taylor wrote,"[a] consideration of state terrorism allows us to examine the problem [of insurgency terrorism] from a different and rather less familiar perspective. In doing so we will see more clearly some of the considerations inherent in the term. We will also, and more importantly, develop a more sophisticated notion of the nature of terrorism. By 'peeling' away the complications arising out of our everyday view of terrorism as the activity of a secret or underground society, we can better come to look at terrorism as a process, and attempt to identify the particular kind of acts that characterise it". Taylor M. *The Terrorist*. (Brassey's Defence Publishers. London. 1988). p40. Others have claimed that there is at least an instrumental 'moral' effect of such violence by the state. Falk for example asserted that so long as terrorist methods are relied upon by states to avoid defeat or hasten victory in war, bolstered by the claim of saving lives, terrorists of all persuasions gain validation. Falk R. *Revolutionaries and Functionaries: The Dual Face of Terrorism*. (E.P.Dutton. New York. 1988). p.XIV. Or as the former United States Attorney General Ramsey Clark noted "anyone truly concerned for the horrors of terrorism must direct their intelligence and energies to prevent police state terrorism". Clark R. 'The Dimensions of Terrorism' in Kochler H. (ed.). *Terrorism and National Liberation*. (International Progress Organisation. Peter Lang. Frankfurt. 1988). pp41-46. p.44. According to R.W. Smith state terror along with political repression and genocide "is likely to claim millions of lives unless major efforts are undertaken to prevent such state imposed deaths" Smith R.W. Review of Bushnell et al State Organized Terror. *American Political Science Review* Dec. Vol.86.(4). 1992. p.1078.

From this it appeared that there were a number of 'gaps' within the literature, the most relevant of which to this author's mind was the lack of work on state terrorism, especially when compared to the extensive literature on 'sub-state' or 'insurgency' terrorism. This claim was subsequently found to be supported by both the opinions of various academics and statistical evidence. For example, in the preface to his book *Terrorism, Ideology and Revolution*, Noel O'Sullivan suggested that the second area of agreement within the field of terrorism studies was the fact that the *recent* study of terrorism has tended to concentrate heavily on opposition groups at the expense of neglecting its use by regimes⁵. The emphasis is mine for it helps to support the conclusion of Stohl, who in 1984 claimed that prior to the last decade, the finest analytical work on the nature of terrorism had been conducted by scholars who were primarily interested in the use of terrorism by governments⁶.

Others can be seen to have gone further than N.O'Sullivan in their relative claims. O'Kane for example wrote that the literature concentrates on "insurgent terrorism rather than state terrorism"⁷. This view is echoed within the existing literature by authors such as Boire⁸, Perdue⁹ and Hocking¹⁰ and it was also shared by an overwhelming majority of respondents to this author's questionnaire on the topic. Of the 117 academics who responded to the question,

⁵ O'Sullivan N. (ed.). *Terrorism, Ideology and Revolution*. (Wheatsheaf Book. Brighton. 1986). px.

⁶ Stohl M. 'National Interests and State Terrorism'. *Political Science*. Vol 36 (1) July. 1984. pp37-52. p37.

⁷ O'Kane R.T.H. *The Revolutionary Reign of Terror*. (Elgar. Aldershot. 1991). p16.

⁸ Boire claimed, "[w]ritings on the subject frequently focus on the complicated legal and political problems of achieving international cooperation as a means of suppressing terrorism. In doing so they treat all terrorism as if there is but a single form, that which will be referred to here in as individualistic terrorism. As a result they exclude from discussion and analysis other situations in which terrorism occurs, such a state terrorism which is a much more prevalent and pervasive form of terrorism". Boire M.C 'Terrorism Reconsidered as Punishment: Toward an Evaluation of the Acceptability of Terrorism as a Method of Societal Change and Maintenance'. *Stanford Journal of International Law*. Vol.20(1). 1984. pp43-143. p47.

⁹ Perdue concluded that caveats withstanding "[m]ost Western academic contributions to the terrorism debate evade the question of institutional domination through fear". Perdue W. *Terrorism and The State: A Critique of Domination Through Fear*. (Praeger. New York. 1989.). p14.

¹⁰ Hocking wrote, "[a] second feature of the literature, is the frequent failure to confront instances of terrorism when they are committed by a state or established regime". Hocking J. *Beyond Terrorism*. (Allen and Unwin. St.Leonards. 1993.). p7.

'Would you say that more, less or just as much, academic work has been done on 'terror/ist 'violence by those in power than on that by insurgents?', 67%(78) indicated that they believed that less academic work has been done on the topic of "'terror/ist' violence by those in power than on that by insurgents". In contrast only 10%(12) indicated that they believed that more academic work has been done on the topic of "'terror/ist' violence by those in power than on that by insurgents", with 7%(8) indicating that "just as" much had been done, and 16%(19) ticking the box entitled "cannot say"¹¹.

In contrast some authors can be seen to have made supporting statements, the nature of which are absolute. For example Walter, one of the few who actually study a particular regime in detail (that of the nineteenth century Zulu chief Shaka), has argued that "Rule by terror a familiar process in history has virtually escaped systematic analysis"¹². Similarly Schmid and Jongman claimed there is a conspicuous absence of literature which addresses itself to the more serious problem of state terrorism¹³. Whilst in an earlier book Schmid had concluded that most authors and researchers on the subject avoid the issue of state terrorism¹⁴. Van Der Kroef has claimed that whilst periodically attention has been given to forms of extra-judicial violence and intimidation by national governments against their own citizens, as a distinct category "terrorism by public authority" has *only begun* to be systematically analysed¹⁵.

In addition to these comments, some authors have used statistics to substantiate their claims. These can be used in support of the initial

¹¹ Seventy eight of the replies to question 6 indicated that they believed that less academic work has been done on the topic of "'terror/ist' violence by those in power than on that by insurgents". In contrast only 12 indicated that they believed that more academic work has been done on the topic, with 8 indicating that "just as" much had been done, and 19 ticking the box entitled "cannot say". Three were left blank.

¹² Walter E.V. *Terror and Resistance: A Study in Political Violence*. (Oxford University Press. Oxford. 1969.). p3.

¹³ Schmid A.P. and Jongman A.J. *Political Terrorism: A new guide to actions, authors, concepts and databases*. (SWIDOC. Amsterdam. 1988.). p179.

¹⁴ Schmid wrote "most [researchers] also shy away from treating in depth regime terrorism" and "state terrorism...has also been neglected by the majority of authors" Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland. Amsterdam. 1984.). p272 and p422 respectively.

¹⁵ Van Der Kroef J.M. 'Terrorism by Public Authority: The Case of the Death Squads of Indonesia and the Phillipines'. *Current Research on Peace and Violence*. Vol. 10 (4). 1987. pp143-158. p143.

hypothesis that there is very little work on the topic of state terrorism. Schmid for example claimed that probably more than 90 percent of the literature was on non-state terrorism¹⁶. Yet his 'guestimate' can be seen as an underestimation of the ratio of works on insurgency terrorism *vis-a-vis* that on terrorism by those in power, if one accepts the content of Lakos' book *Terrorism, 1980-1990: A Bibliography* as a representative sample of the works on terrorism. Despite the 5850 references to articles, databases and books on the topic the contents page reveals the lack of a single chapter or sub-section within a chapter on direct 'state terrorism' by whatever name. However of more importance to this study is the fact that whilst the index contains seventy references under the labels 'state terror', 'police terror' and 'state repression' only one of these is placed beside the additional reference title "conceptual studies"¹⁷.

Even if one assumes that Schmid's 'guestimate' that "more than ninety percent of the literature on terrorism is on non-state terrorism"¹⁸ is a more accurate reflection of reality than the larger figure produced from a content analysis of Lakos' work, it is still possible to claim there is a much smaller amount of work produced on state terrorism and the vast amount on insurgency terrorism. There are three possible explanations for this conclusion. The first is that the small amount of work on terrorism by those in power reflects the fact that the State *cannot* be termed terrorist. The second is that this small amount of literature accurately reflects the 'importance' of this form of terrorism. That is, either/and/or:

- 2a) terrorism by those in power is a rare event in itself;
- 2b) there is very little terrorism by those in power compared to that committed by insurgent terrorism;
- 2c) state terrorism is politically less important than sub-state terrorism.

¹⁶ Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature*. (Amsterdam, North Holland. 1984.). p104.

¹⁷ Lakos A. *Terrorism, 1980-1990: A Bibliography*. (Westview Press. Oxford. 1991). Index p377-443. Fifty nine of these can be found under the title 'State terror', one under the title 'State repression', and one under 'Police terror', subtitled 'Spain'. The rest can be found as subtitles within different sections, eg. 'Brazil.... state terror'. The one reference to conceptual study of state terrorism is placed under the overall title 'State terror'.

¹⁸ Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature*. (Amsterdam, North Holland. 1984.). p104.

The third explanation is that the amount of literature on terrorism by those in power does not reflect its importance in absolute terms or in relation to insurgency terrorism, and that state terrorism has been either unconsciously neglected or deliberately marginalised for one reason or another. This author believes that answer number three is the correct one, but before going on to examine the suggested reasons as to why relatively little work has been done on the topic of state terrorism, this author must show why the other two possible answers are incorrect, and in doing so will simultaneously suggest various reasons why answer three appears to be the correct one. It is therefore to the view that the State cannot be terrorist that the thesis now turns.

Can the State be Terrorist?

Some authors, including J.D. Smith, Ludwikowski, Quester and Hacker and Howard, have implied¹⁹ that the State cannot commit acts of terrorism within its area of domestic jurisdiction (if not elsewhere). Others such as Merkl, Provizer and Farrel actually claim that the State should not, or cannot, be termed terrorist by definition²⁰, thus helping to create and sustain what one author terms the 'myth' that political terrorism is exclusively the activity of non-governmental actors²¹. As Segaller put it, "State terror is a separate subject"²². He like many of those within the 'no school' prefer to apply the ambiguous term 'terror'

¹⁹ Smith for example implies it with his comment that "terrorism is primarily an urban phenomenon carried out by small cells of individuals". Smith J.D. 'Misunderstanding Terrorism'. *Foreign Policy*. Vol. 67. 1987. pp104-120. p112. Whilst Ludwikowski said of the terms 'state terror' and 'terrorism' , "they have little spiritual kinship. They are differently motivated forms of violence and we should emphasize the difference between them rather than accidental linguistic similarity. If we are to successfully fight against terrorism we cannot use this term to label all forms of violence... even if we agree that terrorism is a response to state terror". Ludwikowski R.R. 'Aspects of Terrorism. Reflections'. *Terrorism: An International Journal*. Vol.10.(3).1987 p182. Quester wrote "[d]iscussions on the frequency and causes of terrorism ...(discussions hopefully leading to possible antidotes and solutions) will similarly be handicapped if we are forced to include state terror in the category of terrorism". Quester G. 'Some Explanations for State -Supported Terrorism in the Middle East' in Stohl M and Lopez G.A. *Terrible Beyond Endurance* (Greenwood Press. Westport, Connecticut.1988.). pp225-246. p229. According to Schmid and Jongman, F. Hacker uses the term "terror" for a type of state violence, while he reserves "terrorism" for the insurgent variety". Schmid A.P. and Jongman A.J. *Political Terrorism: A new guide to actions, authors, concepts and databases*. (SWIDOC. Amsterdam. 1988.). p43. R.E. Howard wrote in reply to question 12 of this author's questionnaire "I think state and insurgent terror should be separated not thrown together".

²⁰ Merkl wrote, "[g]overnment violence even unjust violent policies are exempt from a definition of terrorism as long as we accord a legitimate monopoly of violence to the state and its duly authorised functionaries" Merkl P. (ed). *Political Violence and Terror*. (University of California Press. London. 1986.).p20. Farrel wrote, "[t]error practised by a government in office appears as law enforcement and is directed against the opposition. Terrorism on the other hand, implies open defiance of law and is the means whereby an opposition aims to demoralize govern". Farrell W.M.. 'Terrorism is..?'. *Naval War College Review*. 1980. Vol.33. (3). p67. Provizer wrote, "the shared component of "terror" does not mean that it is profitable, in either intellectual or policy terms to collapse two distinct phenomena into a single category. The boundary maintenance problems involved in the concept of terrorism are severe enough without this type of over extension". Provizer N.W. 'Defining Terrorism' in Slann M. and Schechterman B. (eds). *Multidimensional Terrorism*. (Lynne Rienner. Boulder. 1987). pp3-10. p7.

²¹ Stohl M. 'Demystifying Terrorism, The Myths and Realities of Contemporary Political Terrorism' in Stohl M. (ed.) *The Politics of Terrorism*. (3rd ed. Marcel Dekker. New York. 1988). pp1-30. p7.

²² Segaller S. *Invisible Armies: Terrorism into the 1990s*. (Sphere Books. London. 1987.). p.16

to (a variety of acts of) state violence whilst reserving the label 'terrorism' solely for the activities of insurgents. A method also used by Paul Wilkinson who in a review of a number of books on terrorism entitled 'Can a state be terrorist ?' wrote:

"In general all the authors of the works reviewed below [i.e. Trautman, Crenshaw, Bowyer Bell, Lodge, Alon, E.Evans] accept that it is unreasonable to insist on encompassing analysis of the complex processes and implications of both regimes of terror and factional terrorism as a mode of struggle within the same covers. There is a rich and growing literature on what most authors now term state terror, but the term terrorism is now widely used to demote the systematic use of terror by non-governmental actors"²³.

Unfortunately the issue of terminology is not as clear cut as those wishing to study the issue might hope. For many of those who argue that the State can be 'terrorist' also use the term 'state terror' to describe such actions²⁴. A factor which will be investigated in more depth later. Of far more importance here is the fact that a few of the writers within the 'rejectionist' school of thought, usefully attempt to justify their rejection of the idea that the State itself can carry out direct acts of terrorism. This view is at its strongest when it refers to acts carried out within its area of domestic jurisdiction. For those who reject the notion of the State committing acts of terrorism at home do not always claim that the State cannot commit such acts abroad²⁵. It is therefore primarily upon the notion of direct domestic state terrorism that the conceptual side of this thesis focuses. However before this examination

²³ Wilkinson P. 'Can A State Be Terrorist ?'. *International Affairs*. Vol. 57.(3). Summer 1981. pp 467-472. p467. Van Der Kroef similarly declared "terrorism by public authority has only begun to be systematically analysed". Van Der Kroef J.M. 'Terrorism by Public Authority: The Case of the Death Squads of Indonesia and the Philippines'. *Current Research on Peace and Violence*. Vol. 10 (4). 1987. pp143-158.p143.

²⁴ For example Corrado R.R. and Tompkins E. 'A Comparative Model of the Psychological Effects of the Victims of State and Anti-State Terrorism'. *International Journal of Law and Psychiatry*. Vol. 12(4). 1989. pp281-293. p281, 291; and Gurr T.R. 'The Political Origins of State Violence and Terror: A Theoretical Analysis' in Stohl M. and Lopez G.A. (eds.) *Government Violence and Repression: An Agenda for Research*. (Greenwood Press. NY.1986.). pp45-72. p46, 48.

²⁵ R.R. Ludwikowski wrote in reply to question 10 of this author's definition, "I would reserve the term "terrorism" for acts committed outside the area of domestic jurisdiction". The opposite also exists. In reply to question 13, T.Lewellen. wrote: "I have always employed the concept of "state terrorism" or "state terror" to apply only to political killings, political imprisonment, torture, and disappearances by the state against people within its own boundaries".

is embarked upon it is worth noting that in reply to this author's question: 'Can acts, carried out directly by the agents of those in power, ever be labelled acts of 'terror' or 'terrorism'?', only 3% of those 118 respondents answered with an outright 'No'. An overwhelming 86% replying: 'Yes, either as acts of 'terror' or 'terrorism'"²⁶.

Those who reject the notion of the State committing acts of terrorism at home include Quinton, who replied to his own question "Why should the word terrorism with all its pejorative quality, be confined to unofficial violence, to violence not carried out or threatened by the state?", with a two part answer which he claimed went a fairly long way towards a rejection of the idea that the State itself can carry out acts of terrorism within its area of domestic jurisdiction. For him the State cannot be termed 'terrorist' because the amount of actual violence exercised by well-established states is small, most arrests are peaceful, and the State becomes violent only "in reaction to" the occasions when the citizens themselves become violent. Yet a close examination of his work reveals that even when the State's violence is not reactive -that is when it carries out violent acts against peaceful demonstrators, or when its violent actions are random or arbitrary in order to ensure the submission of the public *à la* Stalin- Quinton cannot bring himself to call it 'terrorism', it is merely "terror".²⁷

Another author within the 'no school' has argued that the shared component of 'terror' does not mean that it is profitable, in either intellectual or policy terms, to collapse these two distinct phenomena into a single category that of terrorism. For Provizer the author of these lines, the boundary maintenance problems involved in the concept are severe enough without this type of over-extension²⁸. In contrast, but within the same school of thought, Quester emphasised the more practical 'policy' reasons for refusing to accept the existence of state terrorism, with a point that links nicely with Goldman's unexplained

²⁶ Eight ticked the box entitled "Yes, but only as acts of 'terror'. Three of the replies to question 1 were 'no', 101 indicated "Yes, either as acts of 'terror' or 'terrorism', 6 indicated that it was acceptable to label 'acts carried out directly by the agents of those in power' 'only as acts of 'terrorism". Two of the 120 were left blank.

²⁷ Quinton A. 'Reflections on Terrorism and Violence ' in Warner M. and Crisp R. (eds.) *Terrorism, Power and Protest*. (Edward Elgar. Aldershot. 1990.). pp35-43. p41.

²⁸ Provizer N.W. 'Defining Terrorism' in Slann M. and Schechterman B. (eds). *Multidimensional Terrorism*. (Lynne Rienner. Boulder. 1987). pp3-10. p7.

claim that one "naturally" concentrates on the violence of insurgent groups²⁹. For Quester, discussions on the frequency and causes of terrorism, (discussions hopefully leading to possible antidotes and solutions) will "be handicapped if we are forced to include state terror in the category of terrorism"³⁰. Such a view has been challenged by other terrorologists. Wilkinson, known for his books on the general topic of terrorism, claimed that some of the best historical case-studies of the use of insurgency terrorism vividly demonstrate how state violence often helped to provoke and fuel the violence of terrorist movements³¹. Whilst in the same vein Maxwell Taylor wrote:

"A consideration of state terrorism allows us to examine the problem [of insurgency terrorism] from a different and rather less familiar perspective. In doing so we will see more clearly some of the considerations inherent in the term. We will also, and more importantly, develop a more sophisticated notion of the nature of terrorism. By 'peeling' away the complications arising out of our everyday view of terrorism as the activity of a secret or underground society, we can better come to look at terrorism as a process, and attempt to identify the particular kind of acts that characterise it"³².

Quester also attempted an intellectual justification of his "normal conventional usage of language", by claiming that it was the defence of a line, of territory that differentiates the actions of a state and insurgent groups. For him terrorism is not what a regime perpetuates in the territories it already controls, and over which it has a monopoly of the tools of military power and police violence³³. In a similar vein

²⁹ Goldman J.R. 'Counter Terrorism' in Slann M. and Schechterman B. (eds). *Multidimensional Terrorism*. (Lynne Rienner. Boulder. 1987.).pp33-37. p35. Der Derian interestingly notes, "[r]igorous or broad, rigid or sloppy, definitions are in themselves and important discursive practise of the terrorism industry. Often they appear to be yet another weapon in the vast arsenal of counter-terrorism, aiming to re-establish order and meaning in international relations practice and discourse at a time when both are undergoing extensive and intensive assaults". Der Derian J. *Anti-Diplomacy: Spies, Terror, Speed and War*. (Blackwell. Oxford. 1992). p81.

³⁰ Quester G. 'Some Explanations for State-Supported Terrorism in the Middle East' in Stohl. M and Lopez G.A. *Terrible Beyond Endurance* (Greenwood Press. Westport, Connecticut.1988.). pp225-246. p229.

³¹ Wilkinson P. 'Can A State Be Terrorist?'. *International Affairs*. Vol. 57.(3). Summer 1981. pp 467-472. p467.

³² Taylor M. *The Terrorist*. (Brassey's Defence Publishers. London. 1988.). p40.

³³ Quester G. 'Some Explanations for State-Supported Terrorism in the Middle East' in Stohl. M and Lopez G.A. *Terrible Beyond Endurance* (Greenwood Press. Westport, Connecticut.1988.). pp225-246. p227.

Merkel's emphasises the latter of these reasons to claim that "government violence" and even "unjust violent policies" are exempt from a definition of terrorism as long as we accord a legitimate monopoly of violence to the State and its duly authorised functionaries³⁴.

Yet just because we are prepared to ascribe legitimacy *a priori* to the use of (at least some) violence by the State does not mean that all of the State's actions should always be considered legitimate. A point implied by Gurr when he suggested:

"State terror should be judged not in the absolute but against some standard. Normatively, the standard might be that of international law (which at present condemns genocide but not state terrorism), or the domestic laws of the state in question, or the laws of culturally similar states, or some not-yet-codified conception of global human rights"³⁵.

Slann also suggested non-conceptual reasons why governments can get away with more violence whilst avoiding the label terrorism, than other institutions in society. Namely the unrivalled resources of the State and the fact that there is usually either some popular support for even the most brutal regime or legitimisation of the government from outside by international law³⁶. On this latter point, Skubiszewski asserted that the notion of state terrorism as a crime committed by the State, in contrast to official persons, does not exist in positive international law. He went on to say that in "terms of law, in contrast to the language of politics and diplomacy, the State cannot perpetrate the crime of terrorism"³⁷. However as Gurr just noted, one does not necessarily have to involve international law within one's concept of state terrorism, and this thesis is primarily a study of a political concept.

³⁴ Merkl P. 'Approaches to the Study of Political Violence' in Merkl P. (ed). *Political Violence and Terror*. (University of California Press. London. 1986.). pp19-61. p20.

³⁵ Gurr T.R. 'The Political Origins of State Violence and Terror: A Theoretical Analysis' in Stohl M. and Lopez G.A. (eds.) *Government Violence and Repression: An Agenda for Research*. (Greenwood Press. New York.1986.). pp45-72. p49.

³⁶ Slann M. 'The State as Terrorist' in Slann M. and Schechterman B. (eds). *Multidimensional Terrorism*. (Lynne Rotienner. Boulder. 1987.). pp39-44. p40.

³⁷ Skubiszewski K. 'Definition of Terrorism'. *Israel Yearbook on Human Rights*. Vol. 19. 1987. pp39-54. p48.

The validity of each of these conceptual arguments will be implicitly examined later when the thesis addresses criticisms of its own definition. Their inclusion here is primarily to identify and describe some of the major conceptual problems which might explain the neglect of state terrorism. The idea that there is a conceptual problem surrounding the notion of state terrorism was noted by Duvall and Stohl. For them this conceptual problem results from the fact that the State is typically conceived or understood in the terms of force and violence (to which one can add 'territory' because of the nature of the State). In addition they also noted that those who address the violence practised by legally constituted governments must confront at least one other problem³⁸. This second problem, which they call an emotional one, derives from the commonly held assumption that the State is a neutral arbiter in social conflict and is itself the victim of terrorism, the latter of which is perceived *a priori* as an anti-state phenomenon. Yet as this author noted within his 1991 article, this latter emotional problem will automatically be overcome once one has solved the former conceptual problem. That is, when one shows that the State can be terrorist, terrorism will, of course, no longer be equated with the insurgent's anti-state violence³⁹. Unfortunately despite their assertion that the conceptual problem is certainly not unsolvable, Duvall and Stohl fail to clearly "demarcate that which is terroristic in its essence from that which is not"⁴⁰. A point which will be shown later within a literature review. Instead, they merely (although usefully) describe the various forms that state terrorism can take.

The view that the State cannot be terrorist by definition is that of a minority of the terrorist scholars who answered the question 'Do you think that it helpful or a hindrance to study such acts alongside terror/ist acts carried out by insurgent groups?' contained within this author's questionnaire. Of the 119 responses to this particular question (which includes three answers given by one respondent), only 10% claimed that it was a hindrance to study such acts alongside terror/ist acts carried out by insurgent groups, with 66% saying that it was

³⁸ Duvall R.D. and Stohl M. 'Governance by Terror' in Stohl M. (ed.) *The Politics of Terrorism*. (2nd ed. Marcel Dekker. New York. 1983.). pp179-219. p180.

³⁹ Sproat P.A. 'Can The State Be Terrorist?' *Terrorism: An International Journal*. Vol. 14.(1). Jan-Mar 1991. pp19-29. p19.

⁴⁰ Duvall R.D. and Stohl M. 'Governance by Terror' in Stohl M. (ed.) *The Politics of Terrorism*. (2nd ed. Marcel Dekker. New York. 1983.). pp179-219. p180.

helpful. The remaining 24% of the responses were split between those who replied "neither" or "both". If this latter group is removed so that the figures are solely those who expressed a preference one way or another, the percentage of those who believe that it is helpful or a hindrance to study the two phenomena together rise to 87% and 13% respectively⁴¹.

After showing that the reasons put forward within the literature read by this author as to why the State cannot be termed terrorist are far from solid, the thesis will go on to examine the view that the small amount of literature on the topic accurately reflects the 'importance' of this form of terrorism. That is it will examine the view that state terrorism is, either/and/or: a) a rare event in itself; b) a relatively rare in comparison to insurgent terrorism; c) politically less important than sub-state terrorism. The easiest way of showing that each of these potential answers are flawed is by merely citing claims from the existing literature about its importance both in historical and political terms including the scope and intensity of such acts, especially *vis-a-vis* terrorism carried out by insurgent groups.

⁴¹ To question 3, 78 replies indicated that it was helpful to study 'terror/ist' acts carried out by agents of those in power alongside 'terror/ist' acts carried out by insurgent groups, 12 indicated that it was a hindrance, 9 indicated that it was neither a help nor a hindrance and 20 replies indicated that it was in some respects both a help and hindrance. Two of the 120 were left blank.

The Importance of State Terrorism.

"...the most sobering source justifying the study of state terror is political history."

M. Stohl and G.A. Lopez.⁴²

The idea that state terrorism is either a rare or unimportant event is challenged by Schmid's assertion that terrorism by regimes "has a longer history than insurgent terrorism"⁴³. Another supporting 'historically based' answer is given by Herman and G.O'Sullivan who concluded that the really massive and significant growth of terrorism since World War II has been carried out by states⁴⁴. Whilst Freeman went a little further by claiming that the history of political terrorism in the 20th Century consisted to a large extent of the acts of "terroristic states"⁴⁵. However none of these authors claim as much as Wilkinson. He argued that throughout history the primary agent of terrorisation of civilian populations have been armed military forces whether composed of regular or irregular troops conscripts or mercenaries⁴⁶.

Dimitrijevic's comments on the history of such terrorism not only traces its origins to an far earlier era, but introduces both a spatial and a legal (and/or moral) dimension to the concept. For Dimitrijevic "state terror", placed alongside human rights violations, has "occurred in *almost all periods of history and in almost all countries* of the world"⁴⁷.

⁴² Stohl M. and Lopez G.A. 'Introduction' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Connecticut. 1984.). pp3-10. p4

⁴³ Schmid A.P. and Jongman A.J. *Political Terrorism: A new guide to actions, authors, concepts and databases*. (SWIDOC. Amsterdam. 1988.). p72

⁴⁴ Herman E.S. and O'Sullivan G. *The Terrorism Industry: The Experts and Institutions that Shape our View of Terrorism*. (Pantheon. New York.1989). p83.

⁴⁵ Freeman M. 'State Terrorism and Human Rights in the New Europe' Conference Paper from Conference on 'Terrorism in the New Europe' at the University of Hull. 15-17 May 1992. p52.

⁴⁶ Wilkinson P. 'Three Questions on Terrorism' *Government and Opposition* Vol.8(3) Summer 1973. pp290-312. p294.

⁴⁷ Dimitrijevic as interpreted by P.B.Maggs review of his book 'Tyrannies: Studies in Human Rights and State Terror'. Maggs P.B. 'Review of Tyrannies: Studies in Human Rights and State Terror - A. Dimitrijevic'. *American Journal of International Law*. Vol. 81 (3).1987. p399. [This author's emphasis]

The extreme nature of his answer is however surpassed by the (presumably anarchistic) Sanguinetti who went further in claiming that "All states have always been terrorist"⁴⁸. However whilst this author's study does not attempt to answer such questions, its methodology does not rule out such conclusions. In testing the various definitions of state terrorism, it merely takes an open minded approach à la Walter who claimed that "Terror is not confined to anomalous circumstances or exotic systems. It is potential in ordinary institutions as well as in unusual situations"⁴⁹.

Stohl and Lopez wrote on one occasion that the vast resources of the State suggest that governments *may* make greater use of terrorism than many individuals and insurgent groups⁵⁰. Whilst Narveson similarly claimed that the greatest proportion of terrorist acts *may* be performed by the agents of legitimate governments⁵¹. Some academics, however, are more certain in their claims. Glover for example, suggests that even a casual study of state terrorism shows that it "totally dwarfs unofficial terrorism in its contribution to human misery"⁵². Similarly Oppenheimer asserted that the amount of terror inflicted by insurgent

⁴⁸ Sanguinetti G. *Terrorism and the State*. (Aldgate Press. London. 1982). p99. Also cited by O'Sullivan N. 'Terrorism, Ideology and Democracy' in O'Sullivan N. (ed.). *Terrorism, Ideology and Revolution*. (Wheatsheaf Book. Brighton. 1986.). pp3-26. p22. [This author's emphasis.]

⁴⁹ Walter E.V. *Terror and Resistance: A Study in Political Violence*. (Oxford University Press. Oxford. 1969.). p3. Support for this can be seen in the words of Bell who argued that, "[s]tate terror of course has long been with us , even if only a relatively rare option for democratic governments". Bell J.B. *A Time of Terror How Democratic Societies Respond to Revolutionary Violence* (Basic Books. New York. 1978).p.3.; and Bushnell et al who claimed that, "[i]n this century alone, tens of millions of people, living in most regions of the world, under communist, democratic, military and theocratic governments have been and continue to be victim of state organized repression and violence" Bushnell P.T., Shlapentokh V., Vanderpool C.K. and Sundriam J. 'State Organized Terror Tragedy of the Modern State' in Bushnell P.T., Shlapentokh V., Vanderpool C.K and Sundriam.J. (eds.) *State Organized Terror* (Westview Press. Oxford. 1992.). pp3-22. p3.

⁵⁰ Stohl M. and Lopez G.A. 'Introduction' in Stohl M. and Lopez G.A. (eds.). *Terrible Beyond Endurance* (Greenwood Press. Westport, Connecticut.1988.).pp1-12. p2. [My emphasis].

⁵¹ Narveson J. 'Terrorism and Morality' in Frey R.G. and Morris C.W. (eds). *Violence, Terrorism and Justice*. (Cambridge University Press. Cambridge. 1991.). pp116-169. p117 [My emphasis]. Interestingly Quester who is cited earlier decrying the idea of state terrorism, wrote "state terror *can* be worse than state sponsored terror" Quester G. 'Some Explanations for State-Supported Terrorism in the Middle East' in Stohl. M and Lopez G.A. *Terrible Beyond Endurance* (Greenwood Press. Westport, Connecticut.1988) pp225-246. p229. [My emphasis]

⁵² Glover J. 'State Terrorism' in Frey R.G. and Morris C.W. (eds). *Violence, Terrorism and Justice*. (Cambridge University Press. Cambridge. 1991.). pp256-275. p273

terrorists no matter how dreadful is "a thimbleful compared to official 'legally' sanctioned terror"⁵³. Unfortunately for those who like empirical data, both remain without figures, presumably because of the methodological difficulty (if not impossibility) of quantifying 'human misery'; or measuring 'terror' or the volume of thimbles. However such logic cannot not excuse the lack of such empirical evidence or at least an educated 'guestimate' by others such as Stohl, who in one article claimed that states rather than insurgent groups have been the most persistent and successful users of the strategy of terrorism⁵⁴; and Chaliand who claimed that this form of terrorism generates many more victims than the other forms of terrorism⁵⁵. Although, speaking abstractly, the sheer scope of carrying out such an historical task on a world-wide scale, combined with the actual physical dangers of studying regimes that resort to 'terrorism', would excuse the failure to produce such empirical evidence.

In contrast various authors have attempted to quantify their claims. For example on another occasion Stohl asserted that more than half (but presumably not all) of the world's governments perpetrate state terrorist acts on a daily basis⁵⁶. A view which can be seen as giving support to Walter's earlier conclusion that the potential to commit acts of state terrorism lies in every structure, rather than being inherent, as Sanguinetti seemed to assert. Stohl however makes up for this lack of quantifiable data in another work where he supports his claim that the rates of death, destruction casualties of terrorism have been substantially greater from the hands of state operatives than from insurgent challengers, with some figures. Yet even then his claim that

⁵³ Oppenheimer M. 'Terrorism is Sometimes Justified' in Szumski B. (ed.). *Terrorism: Opposing Viewpoints*. (Greenhaven Press. St. Paul. Minnesota. 1986.).pp86-89. p87.

⁵⁴ Stohl M. 'International Dimensions of State Terrorism' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Connecticut. 1984.). pp43-58. p55.

⁵⁵ Chaliand also wrote that in Guatamala, for example, Amnesty International believed that in the four years between 1980 and 1984 there were some 15,000 deaths. In contrast The Rand Corporation put at 3,000 the total number of deaths attributable to acts of terrorism since 1968. Chaliand G. 'Terrorism: A Means of Liberation'. *Terrorism and Political Violence*. Vol 1. (1). Jan 1989. pp21-27. p21.

⁵⁶ Stohl M. 'Demystifying the Mystery of International Terrorism' in C.W. Kegley (ed.). *International Terrorism: Characteristics; Causes; Controls*. (St.Martin's. New York. 1990). pp81-96. p82. Schmid and De Graaf wrote, "[i]t can be argued - and there are good reasons for it - that state terrorism is the main terrorist problem in the world where as many as 117 states violate human rights in one way or another" Schmid A.P. and De Graaf J. *Violence as Communication*. (SAGE. London.1982.). p2.

"state terrorism in the domestic realm is responsible for millions of deaths" is an (imprecise) absolute figure rather than as a ratio⁵⁷. Similarly Boire uses a figure in this useful, if rather imprecise way, when he asserted that in striking contrast to the comparatively light amount of carnage resulting from individualistic terrorism however, state terrorism is responsible for "millions of deaths" as well as being far more pervasive and destructive⁵⁸. Likewise Stohl's assertion that during the period that the Department of State has kept statistics on international terrorism i.e. 1975-1985, "tens of thousands of people have perished at the hands of government terrorism" leaves a lot to be desired by empiricists. He goes on to claim that: "[t]his terror far outstrips the insurgent terror that gains most western press notice"⁵⁹.

In contrast Corrado and Topkins are more precise in their use of statistics to support their claim that: "state terrorism surpasses anti-state terrorism both in scope and intensity of violence". However their comparison of the U.S. State Department's view that between 1975-85 there were approximately 5000 events including threats related to anti-state terrorism, with their own estimation that hundreds of thousands of people were killed or tortured because of state terrorism⁶⁰, does not empirically prove *all* aspects of their claim. Ahmed is far more precise in his use of numbers. He estimated that the ratio of loss of life by illegitimate state and state sanctioned terror (the latter being an unfortunate addition) when compared with revolutionary terror or non official terror is probably half a million to one⁶¹. Although such a large

⁵⁷ Stohl M. 'National Interests and State Terrorism'. *Political Science*. Vol 36 (1) July. 1984. pp37-52. p37 and 40.

⁵⁸ Boire M.C. 'Terrorism Reconsidered as Punishment: Toward an Evaluation of the Acceptability of Terrorism as a Method of Societal Change and Maintenance'. *Stanford Journal of International Law*. Vol.20 (1). 1984. pp43-143. p.71.

⁵⁹ Stohl M. 'Demystifying the Mystery of International Terrorism' in C.W. Kegley (ed.). *International Terrorism: Characteristics; Causes; Controls*. (St.Martin's. New York. 1990.). pp81-96. p.82. Interestingly enough in the previous paragraph he notes the same figures, dates and source as Corrado and Tompkins, unfortunately all references have been deliberately omitted in Kegley's book).

⁶⁰ Corrado R.R. and Tompkins E. 'A Comparative Model of the Psychological Effects of the Victims of State and Anti-State Terrorism'. *International Journal of Law and Psychiatry*. Vol. 12(4). 1989. pp281-293. p281.

⁶¹ Ahmed E. 'Comprehending Terror' *MERIP* Vol.16 (4). May/June 1986. pp3-5, cited by Falk R. 'Revolutionaries and Functionaries. The Dual Face of Terrorism' in Kegley C.W.(ed.). *International Terrorism: Characteristics; Causes; Controls*. (St.Martin's. New York. 1990.). pp39-44. p33.

scale comparative analysis was carried out in a more detailed manner by Herman and G.O'Sullivan and collated in the following table:

Killings by State and Non-State Terrorists: numbers and orders of
magnitude.

<u>Types of killing</u>	<u>Numbers killed</u>	<u>Fraction or Multiple of PLO killings</u>
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Non-state

German: Red Army Faction, Revolutionary Cells, and all other non state, January 1970-April 1979	31	0.1
Italian: Red Brigades and all other non-state, 1968-82	334	1.2
PLO: Israelis killed in all acts of terror, 1968-81	282	1.0
World: all "international terrorists," CIA global aggregate, 1969-80	3,368	11.9

Single incidents of state terror

El Salvador: Rio Sumpul, May 14, 1980	600+	2.1+
South Africa: Kassinga refugee camp May 4, 1978	600+	2.1+
Guatemala: Panzos, May 29, 1978	114	0.4
Israel: Sabra Shatila, September 16-18, 1982	1,900-3,500	6.7-12.4

Larger dimensions of state terror

Argentina: 1976-82 "disappeared"	11,000	39.0
Chile: 1973-85	20,000+	70.9+
Dominican Republic: 1965-72	2,000	7.1
El Salvador: Matanza I, 1932	30,000	106.4
El Salvador: Matanza II, 1980-5	50,000+	177.3+
Guatemala: Rios Montt pacification campaign, March-June 1982	2,186	7.8
Guatemala: 1966-85	100,000+	354.6+
Indonesia: 1965-6	500,000+	1,773.0+
Indonesia: invasion and pacification of East Timor, 1980-5	200,000+	709.2+
Libya: external assassinations of Libyans, 1980-3	10+	0.04+
Cambodia: Pol Pot era, 1975-8	300,000+	1,063.8+
US-sponsored Contras: civilians in Nicaragua, 1981-7	3,000+	10.6
South Africa and proxies: in Angola and Mozambique, 1980-9	1,000,000+	3,546+

Unfortunately their data⁶² and resulting comparisons can be criticised for being based upon a variety of rather broad 'definitions' of the term terrorism. Yet on another level this can be seen to be of little importance in that many, if not most, authors on the topic fail to define their terms, never mind prove that their statistics produce their figures. The largest differentiation between the number of acts of terrorism committed by insurgents and those committed by the state found by this author was provided by Segaller who produced a ratio so high that it gives him the excuse of not providing any figures. For Segaller the actual number of incidents and victims of 'state terror' *infinitely* outweighs the toll of insurgency terrorism⁶³.

In contrast to this quantitative approach, some authors have suggested 'qualitative' reasons as to why it is important to study state terrorism; or even why it is a more important area of study. Pipes, for example, has

⁶² Herman E.S. and O'Sullivan G. ' 'Terrorism' as Ideology and Cultural Industry' in George A.(ed.) *Western State Terrorism*. (Polity Press. Oxford. 1991.). pp39-75. pp.41-42. They cite:

- a. H.J.Horchem, 'Political Terrorism: The German Perspective', in Ariel Merari (ed), *On Terrorism and Combatting Terrorism* (University Publication of America, 1985). p63.
- b. V.S. Pisano, *Terrorism and Security: The Italian Experience, Report of the Subcommittee on Security and Terrorism*, Senate Judiciary Committee, 98th Cong., 2nd Sess., November 1984.. p63.
- c. B.Michael, *Ha'aretz* (July 16, 1982), citing official police statistics. Some of the 282 were killed by Israeli forces in attempts to free hostages by force.
- d. CIA, *Patterns of International Terrorism: 1980* (CIA, June 1981). p. vi.
- e. M.McClintock, *The American Connection, vol.1, State Terror and Popular Resistance in El Salvador* (Zed Books, 1985), p.306
- f. R.Leonard, *South African at War* (Lawrence Hill, 1983), p67.
- [for some unexplained reason g is omitted]
- h. The Lebanese government claims that it recovered 762 bodies and 1,200 were privately buried by relatives. N.Chomsky, *The Fateful Triangle* (South End, 1983), p.370. In a careful study, Amnon Kapeliouk estimates 3,000-3,500 murdered: *Sabra and Shatila Inquiry into a Massacre* (Association of Arab- American University Graduates, 1984). pp62-3
- i. J.Simpson and J. Bennett, *The Disappeared and the Mothers of the Plaza* (St. Martins, 1985). p.7.
- j. Amnesty International, *Report on Torture* (Farrar, Straus and Giroux, 1975), p252.
- k. C.M.Gutierrez, *The Dominican Republic: Rebellion and Repression* (Monthly Review Press, 1972), p11.
- l. R.Armstrong and J. Shenk, *El Salvador: The Face of Revolution* (South End, 1982). p30.
- m. Central America Historical Institute.
- n. Amnesty International, Special Briefing, "Guatemala: Massive Extrajudicial Executions in Rural Areas under the Government of General Efraim Rios Montt", (July 1982). px
- o. "Bitter and Cruel...", Report of a Mission to Guatemala by the British Parliamentary Human Rights Group (October 1984): C. Krueger and K.Enge, *Without Security or Development; Guatemala Militarized*, report submitted to the Washington Office on Latin America, (June 6, 1985).
- p. Amnesty International, *Political Killings by Governments* (Amnesty International, 1983), p.34. This is a conservative estimate.
- q. N. Chomsky, *Towards a New Cold War* (Pantheon, 1982), pp.341 and 470 (citing Father Leoneto Vierra do Rego and Father Francisco Maria Fernandez).
- r. Amnesty International, *Political Killings by Governments*, pp69-77.
- s. Ibid., p.24.
- t. H.Sklar, *Washington's War on Nicaragua* (South End, 1988)
- u. P.Johnson and D. Martin, *Frontline Southern Africa* (Four Walls Eight Windows, 1988), p467 and sources used there.

⁶³ Segaller S. *Invisible Armies: Terrorism into the 1990s*. (Sphere Books. London. 1987.). p16. Similarly J. McCamant in response to question 13 of this author's questionnaire wrote in regards to his study of Latin America, "states perpetrate more acts of terror than opposition...governments out did opposition by at least a ratio of ten to one and in most cases the ratio was infinite as there was no oppositional violence".

argued that the state element (although he implies 'support' only) makes terrorism far more important politically than it would be if confined to small organisations hiding from the law⁶⁴. Unfortunately however Pipes does not explain his reasoning, unlike Segaller who suggests that such direct internal "state terror is an offense more intolerable even than the terrorism of small groups" because of the legal expectations attached to the State by its own people⁶⁵. Herman claims that state (or "wholesale") terrorism is much more important than non-state violence because it is rooted in relatively permanent structures that allow terror to be institutionalised. His concern is that the institutionalisation of terrorism by the State could develop a reckless permanency of its own, which he contrasts with the frequently transitory nature of what he terms the "retail terrorists"⁶⁶. The worry that terrorism might be institutionalised within the State is supported by Bushnell *et al* ⁶⁷, and Arendt in her work on totalitarian regimes⁶⁸. Similarly both Stohl and Thackrah have argued that the strategies and tactics of terrorism have become integral components of the foreign policy instruments of the modern state⁶⁹.

⁶⁴ Pipes D. 'Why Assad's Terror Works and Qadhafi's Does Not'. *Orbis* . Vol. 34 (1). Winter 1990. pp501-509. p501.

⁶⁵ Segaller S. *Invisible Armies: Terrorism into the 1990s*. (Sphere Books. London. 1987). p16.

⁶⁶ Herman E.S. *The Real Terror Network*. (South End Press. Boston. 1982). p83. Retail terrorists can of course become wholesale terrorists as with Israeli leaders Begin and Shamir formerly of the Stern and Irgun Gangs. See Chomsky N. 'International Terrorism: Image and Reality' in George A.(ed.) *Western State Terrorism*. (Polity Press. Oxford. 1991.). pp12-38. p28,35.

⁶⁷ Bushnell *et al* claimed that "[i]t has become evident that the increasingly sophisticated and continuously expanding bureaucratic and technical capabilities of states everywhere for violence and repression". Bushnell P.T., Shlapentokh V., Vanderpool C.K. and Sundriam J. 'State Organized Terror Tragedy of the Modern State' in Bushnell P.T., Shlapentokh V., Vanderpool C.K and Sundriam.J. (eds.) *State Organized Terror* (Westview Press. Oxford. 1992.). pp3-22.p.3. They rely heavily upon the work of Giddens A. *Violence and the State*. Vol.II of *A Contemporary Critique of Historical Materialism*. (Polity Press. Cambridge.1985.).

⁶⁸ Arendt wrote, "[t]error continues to be used by totalitarian regimes even when its psychological aims are achieved" and "terror.....is the very essence of its form of government". Arendt H. *The Origins of Totalitarianism* (3rd edition. George Allen and Unwin. London. 1966.) p.344.

⁶⁹ Stohl M. 'International Dimensions of State Terrorism' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Connecticut. 1984.). pp43-58. p55. and Thackrah J.R. *The Encyclopedia of Terrorism and Political Violence*. (Routledge, Kegan and Paul. London. 1987.). p236. Again the sentences are almost exact, with Stohl saying: "strategies and tactics of terrorism have become integral components of the foreign policy instruments of the modern state" to Thackrah's, " The tactics and strategies of terrorism have

In addition to these comments made by various academic authors a further reason to persuade the reader that state terrorism is neither, a rare event, nor a relatively rare one compared to insurgent terrorism, nor politically less important than sub-state terrorism, is the history of the word itself.

The Etymology of 'Terrorism'.

The history of the word 'terrorism' also seems to refute the idea that state terrorism is either a rare or unimportant event. For Stohl, the particular irony of what he terms the "myth" that political terrorism is exclusively the activity of non-governmental actors is that the first use of the term 'terrorism' referred to the direct activities of a State -that of France- between 1793 and 1798⁷⁰. Other authors in agreement with this identification of the first use, and original meaning of the term include Walter, Parry, B. Singh, Fields and Teichman⁷¹. Indeed *The Oxford English Dictionary* still defines terrorism as "Government by intimidation as directed and carried out by the party in power in France between 1789-1794"⁷².

According to Dallas the first dictionary to enter the word was the 1798 edition of *Dictionnaire de l'Academie Francaise*. Within it the word 'terrorism' was described, -in French-, as a "system, a regime of terror"⁷³. Interestingly Lacquer noted that two years earlier a French dictionary stated that the Jacobins had on occasions used the term 'terror' in a positive sense when speaking and writing about themselves. Schmid can be seen to have provided an explanation for

⁷⁰ Stohl M. 'Demystifying Terrorism, The Myths and Realities of Contemporary Political Terrorism' in Stohl M. (ed.) *The Politics of Terrorism*. (3rd ed. Marcel Dekker. New York. 1988). pp1-30. p8.

⁷¹ Walter E.V. *Terror and Resistance: A Study in Political Violence*. (Oxford University Press. Oxford. 1969.). p4; Parry A. *Terrorism: From Robespierre to Arafat*. (Vanguard Press. New York. 1976.).p39; Singh B. 'An Overview' Alexander. Y and Finger S. (eds). *Terrorism: Interdisciplinary Perspectives*. (McGraw-Hill. Maidenhead.1977.). pp5-17. p6; Fields L.G. 'Contemporary Terrorism and The Rule of Law' *Military Law Review*. Vol.113. 1986. p1-15.p3. Teichman J. 'How to Define Terrorism'. *Philosophy*. Vol. 64. 1989. pp505-517.p507. Also Chomsky who wrote, "[t]he term "terrorism" came into use at the end of the eighteenth century, primarily refering to violent acts of government designed to ensure popular submission. That concept is plainly of little benefit to the practitioners of state terrorism, who in holding power are in a position to control the system of thoughts and expression. The original sense has therefore been abandoned and the term terrorism has to be applied mainly to retail terrorism by individuals or groups". Chomsky N. *Pirates and Emperors: International Terrorism in the Real World*. (Black Rose Books. Montreal. 1987.). p9.

⁷² The O.E.D. also defines terrorism as "2. A policy intended to strike with terror those whom against whom it is adopted; the employment of methods of intimidation; the fact of terrorizing or condition of being terrorized." Simpson J.A. and Weiner S.C. *The Oxford English Dictionary* (2nd. ed. Clarendon Press. Oxford. 1989.). Part XVII p820-1.

⁷³ Dallas G. 'An Exercise in Terror: The Paris Commune 1871' *History Today* Vol. 39. February 1989. p38-44. p38. Lacquer asserts that it was given in the 1798 supplement of *Dictionnaire de l'Academie Francaise*. Lacquer W. *Terrorism* (Weidenfeld and Nicolson. London.1972.). p6.

this change. He claimed that the Jacobin led National Convent had declared 'terror' to be the order of the day on 30th August 1793, thereby giving legal sanction to a number of emergency measures against the monarchist traitors via the Terror of the Committee of Public Safety (of which Robespierre was the most prominent member). Soon those who had originally supported Robespierre's reign of terror began to fear for their own lives as this instrument began to target revolutionary allies to both the right and left of Robespierre, namely the Indulgents under Danton, and the Hébertists. However because they could not accuse Robespierre of the Terror, since they had also declared it to be the legitimate form of government, they accused him of "terrorism". Thus under the Thermidorian reaction, the agents of the revolutionary tribunals were termed "terrorist". This term of abuse with criminal implications spread fast in Europe⁷⁴ including Britain where Burke, in a famous passage written in 1795 wrote about "thousands of those Hell hounds called terrorists"⁷⁵. The subsequent change in the use of the term 'terrorism' from one which was originally applied to the actions of rulers who molested their own subjects (and the world), to one whose use is now restricted to 'thieves who molest the powerful' reveals according to Chomsky, the power of the State in the free West in controlling the system of thought and expression⁷⁶. However Chomsky's explanation would have to conceive of various Western states continually controlling the system of thought and expression at least since the end of the 19th Century, when the word had become associated with both the anti-Tsar violence of 1880s and the anti-state violence of

⁷⁴ Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature*. (Amsterdam, North Holland. 1984.). p66: Lacquer W. *Terrorism* (Weidenfeld and Nicolson. London.1972.). p6.

⁷⁵ Lacquer W. *Terrorism* (Weidenfeld and Nicolson. London.1972.). p6.

⁷⁶ Chomsky also wrote, "[t]he term "terrorism" came into use at the end of the eighteenth century, primarily referring to violent acts of government designed to ensure popular submission. That concept is plainly of little benefit to the practioners of state terrorism, who holding power are in a position to control the system of thoughts and expression. The original sense has therefore been abandoned and the term terrorism has to be applied mainly to retail terrorism by individuals or groups". N.Chomsky. *Pirates and Emperors: International Terrorism in the Real World*. (Black Rose Books. Montreal. 1987.). p9.

the anarchists in the 1890s⁷⁷, if not before (be it 1848⁷⁸ or with the end of Robespierre).

Any credible explanation of the contemporary use of the term would have to explain the caveats, that is the fact that most exceptions to this rule that terrorism is carried out by sub-state actors tend to focus on totalitarian i.e. fascist or communist state terror or terrorism⁷⁹. This problem however is not the main one to be answered by the thesis. Instead it attempts to address, if not resolve, the conceptual problem which may explain the overall neglect of state terrorism. This conceptual problem noted earlier by Duvall and Stohl surrounds the use of the terms 'terrorism' and 'the State' which often results in the conclusion that the nature of the two concepts are incompatible. Seen from this perspective: "state terrorism is merely a pejorative label for what states do by right"⁸⁰.

To sum up then, at this stage of the thesis the view that the State cannot be termed terrorist is rejected here for various reasons. Firstly, the suggested reasons as to why the State cannot be termed terrorist has been seriously challenged, if not refuted. Secondly, the etymology of the word reveals that the word 'terrorism' (and its derivatives) were originally used to describe the actions of the State. Thirdly, the vast majority of 'terrorologists' who responded to this authors questionnaire

⁷⁷ Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature*. (Amsterdam, North Holland. 1984.). p66.

⁷⁸ Teichman wrote, "[t]he change can perhaps be traced to the middle of the nineteenth century. After about 1848, terrorism, at least in Europe and Russia, was conceived by its exponents as comprising a kind of action directed against tyrannical rulers." Teichman J. 'How to Define Terrorism'. *Philosophy*. Vol. 64. 1989. pp505-517. p508.

⁷⁹ Stohl declared, "[t]he singular exception to this myth proposed by most liberal Western authors is the recognition that non-democratic, totalitarian, fascist or communist states practise terrorism". Stohl M. 'Demystifying Terrorism, The Myths and Realities of Contemporary Political Terrorism' in Stohl M. (ed.) *The Politics of Terrorism*. (3rd ed. Marcel Dekker. New York. 1988). pp1-30. p8. Also a quantitative content analysis of Lakos' 134 references in his section on state sponsorship reveals that of the references that can be attributed, to one country or another, 42 relate solely to the Soviets and socialist allies (of which only Cuba (2) is mentioned), 13 on Middle Eastern countries in contrast to 4 on the U.S. and it's Western allies (nil). Producing a ratio of 10.5 to one or 13 references on Soviet terrorism for every 1 on American terrorism if those on allies (2) and 'balanced' ones examining both (1) are excluded.

⁸⁰ Gurr T.R. 'The Political Origins of State Violence and Terror: A Theoretical Analysis' in Stohl M. and Lopez G.A. (eds.) *Government Violence and Repression: An Agenda for Research*. (Greenwood Press. New York. 1986.). pp45-72. p45.

appear to take this view, for in response to the question, 'Can acts, carried out directly by the agents of those in power, ever be labelled acts of 'terror' or 'terrorism'?' only 3% of those 118 respondents answered with an outright 'No', with an overwhelming 86% replying 'Yes, either as acts of 'terror' or 'terrorism''⁸¹.

As to the belief that the small amount of literature accurately reflects the 'importance' of this form of terrorism -that is state terrorism is, either/and/or; a) a rare event in itself; b) a relatively rare event in that there is far more insurgent terrorism; c) politically less important than sub-state terrorism- such a view seems to have been severely questioned, if not refuted, by the claims made within the existing literature which suggest that state terrorism is widespread. This view is also supported by the replies to this author's questionnaire. For example only three percent of respondents claimed that state terrorism is a more recent phenomenon than insurgent terrorism, compared to 37% who indicated that it had a longer history⁸². Likewise only 4% of the respondents indicated that terrorism by those in power has occurred less often throughout history than insurgent violence, in comparison with 55% who said it had occurred more often⁸³. Finally only 3% of the

⁸¹ Eight ticked the box entitled "Yes, but only as acts of 'terror'. Three of the replies to question 1 were 'No', 101 indicated "Yes, either as acts of 'terror' or 'terrorism', 6 indicated that it was acceptable to label 'acts carried out directly by the agents of those in power' 'only as acts of 'terrorism''. Two of the 120 were left blank.

⁸² Forty three respondents to question 5(a) indicated that they believed such 'terror/ist' violence by those in power is historically "earlier than" such violence by insurgents, 4 indicated that they believed such 'terror/ist' violence by those in power is historically "more recent" and 27 indicated that is "just as recent" as such insurgent violence. Forty one indicated that they could not say one way or another, and 5 failed to answer the question. Question 5a asked "Do you think that such 'terror/ist' violence by those in power is historically earlier, more recent, just as recent than such violence by insurgents?", to which 115 authors replied. Thirty-seven percent ticked the box marked 'earlier'. Three percent indicated that it was "more recent" than such violence by insurgent groups, and 23% percent indicated that it was 'just as recent' a phenomenon. The remaining 36% ticked the box labelled "cannot say".

⁸³ Question 5c asked "Do you think that such 'terror/ist' violence by those in power has occurred more, less, just as often throughout history?". To which sixty-seven replied "more often", compared to only 5 "less often", 16 answered 'just as' often and 30 answered 'cannot say'. Three left the boxes blank. Also In answering the question 5b which asked "Do you think that such 'terror/ist' violence by those in power occurs more, less, or just as frequently in today's world than by insurgents?", 48% of the 118 respondents answered "more frequently" with only 12% answered "less frequently", 17% indicated "just as" frequently and 23% "cannot say". Fifty-seven respondents to question 5(b) answered "more frequently" with only 14 answering "less frequently", 20 answered "just as" frequently and 27 answered 'cannot say'. Two were left blank.

119 respondents to this author's questionnaire claimed that state terrorism was "less important" than insurgent terrorism with 27.5% claiming it was more important⁸⁴. It is therefore to the explanations for the neglect of state terrorism by academics that this thesis now turns.

⁸⁴ Seventy four of the 119 respondents to question 5(d), which asked "Do you think that such 'terror/ist' by those in power is more, less, or just as important an area of study than such violence by insurgents?" indicated that state terror/ism is "just as" important an area of study than such violence by insurgents. Only 3 claimed that it was "less important", compared to 33 who indicated that it was "more important". The remaining 9 ticked the box labelled 'cannot say' and one questionnaire was left blank.

Explanations for the Neglect of State Terrorism.

"By and large when the public hears the word terrorist they think revolutionaries...[the government's functionaries] have won temporarily the contested semantic battleground"

R. Falk⁸⁵.

As already noted within the first few pages of the thesis there is strong evidence to suggest that most writers and researchers on the subject of political terrorism avoid the issue of state terrorism⁸⁶. Schmid for example concluded that "those who exclude state violence from the field of terrorism are in a minority, though a substantial minority"⁸⁷. He went on to say that given the ubiquity of the rule of terror, the uneven attention given to regime terrorism in contrast to insurgency terrorism by social scientists is "depressing"⁸⁸. The view that state terrorism has been neglected can be seen to be supported by the answers received in reply to this author's questionnaire. For example only 10% of the 117 respondents to the question, "Would you say that more, less or just as much, academic work has been done on 'terror/ist' violence by those in power than on that by insurgents?", indicated that they believed that more academic work has been done on the topic of "'terror/ist' violence by those in power than on that by insurgents". Two-thirds indicated that they believed that less academic work has been done on the topic of "'terror/ist' violence by those in power than on that by insurgents"⁸⁹. Interestingly a surprisingly high 63% of the 115 respondents to the

⁸⁵ Falk R. *Revolutionaries and Functionaries: The Dual Face of Terrorism*. (E.P.Dutton. New York.1988.). p141.

⁸⁶ Schmid wrote, "most [researchers] also shy away from treating in depth regime terrorism " and "state terrorism...has also been neglected by the majority of authors' Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland. Amsterdam. 1984.). p272 and p422 respectively.

⁸⁷ Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature*. (North Holland. Amsterdam. 1984.). p104.

⁸⁸ Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature*. (North Holland. Amsterdam. 1984.). p174.

⁸⁹ Seventy eight of the replies to question 6 indicated that they believed that less academic work has been done on the topic of "'terror/ist' violence by those in power than on that by insurgents". In contrast only 12 indicated that they believed that more academic work has been done on the topic, with 8 indicating that "just as" much had been done, and 19 ticking the box entitled "cannot say". Three were left blank.

question "Have you ever written on the topic of direct 'terror/ism' by those in power?" answered "Yes"⁹⁰. However a detailed examination of the replies revealed only 30 or so of these backed up their claim by provided a definition and many of these barely deserve this description (see Appendix A). This overall conclusion raises the question of why such a situation has arisen and it is to this part of the thesis addresses itself.

One explanation for both the small amount of academic work on state terrorism, and Schmid's surprise at finding that 26% of his 109 definitions allow for terrorism by the State⁹¹ is Hocking's claim that authors such as Lacquer, Wilkinson and Jenkins acknowledged that state terrorism exists but nevertheless confine their analysis to incidents of revolutionary terrorism.⁹² A fine example of this technique was provided by Tupman in his grandly-titled paper 'Towards a typology of terrorism: Criticisms and Definitions in the Field of Political Violence'. After noting The Oxford English Dictionary's state-centric use of the term terrorism, Tupman said "Let us leave the issue of state terror for the moment"⁹³ never to return to it. Unfortunately however whilst welcome for the fact that it highlights a tendency of authors, Hocking's comment does not explain why academics should do such a thing.

In contrast the three-fold explanation by Bushnell *et al* for the neglect of state terrorism can be seen as such an attempt at an explanation for the neglect of state terrorism. The first of the factors identified by Bushnell *et al* was the scarcity of information on the topic. A situation which they say was aided by the secrecy of the perpetrator's decision making (if not actions), and the fact that the states in question may

⁹⁰ A corresponding 37% replied "No". Seventy three of the responses to question 4 answered 'Yes' and a corresponding 42 replied "No". Five respondents failed to answer the question.

⁹¹ Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature*. (North Holland. Amsterdam.1984.). p103.

⁹² Hocking commenting on Lacquer W. *Terrorism*. (Weidenfeld and Nicholson. London. 1977.). p7; Wilkinson P. *Terrorism and the Liberal State*. (Macmillan. London. 1977.). pp97-102 and Jenkins B. *International Terrorism: A New Mode of Conflict* in Carlton D. and Schaerf C. (eds) *International Terrorism and World Security* (Croom Helm. London. 1975).p14,19. Hocking J. 'Orthodox Theories of Terrorism': the Power of Politicised Terminology'. *Politics* (Sidney). Nov.1984. pp 103-110. p105.

⁹³ Tupman B. *Towards a Typology of Terrorism: Criticisms and Definitions in The Field of Political Violence*. (Broomfield Papers. University of Exeter. 1989.). p2.

have destroyed any incriminating documents and may have helped witnesses to 'disappeared' themselves. These processes can be facilitated by the notion of state sovereignty which hinders any outside investigation. Thirdly he suggest that the existing 'theoretical frameworks' of social science find it difficult to identify such state violence as terror⁹⁴. This last point is supported by other academics who see the neglect of state terrorism as a microcosm of a larger problem within academia. McCamant, for example, noted that one can search in vain through the thousands of articles and books written by political scientists, political sociologists, economists and anthropologists for references to the awful deeds done by the state, leading him to conclude that the social sciences have an "antiseptic" view of state violence⁹⁵. Likewise Mason and Krane have claimed that inattention to state sanctioned terror is symptomatic of the tendency among students of revolutions to treat repressive violence as largely reactive in character, with the form and levels of such violence being determined by the scope and intensity of the insurgent violence and not *vice-versa*. The result is that: "proactive or pre-emptive violence by the state" has seldom been accorded what they term "independent analytical attention"⁹⁶.

Social scientists however are not the only group of academics who have a problem in addressing the violence of the state *per se*, never mind that of terrorism. Groom has claimed that historians find it difficult to think themselves into the mores of a Robespierre or a Stalin's reign of terror. A fact that may be at least partially explained by his comment that it is far easier to conceptualise the use of terror as a weapon to achieve a specific goal rather than to conceptualise it as a form of

⁹⁴ Bushnell P.T., Shlapentokh V., Vanderpool C.K. and Sundriam J. 'State Organized Terror Tragedy of the Modern State' in Bushnell P.T., Shlapentokh V., Vanderpool C.K. and Sundriam.J. (eds.) *State Organized Terror* (Westview Press. Oxford. 1992) pp3-22. p3-4.

⁹⁵ McCamant J.F. 'Governance without Blood: Social Sciences Antiseptic View of Rule: or the Neglect of Political Repression' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Conneticut. 1984.). pp1-42. p11.

⁹⁶ Mason T.D. and Krane D.A. 'The Political Economy of Death Squads: Towards a Theory of the Impact of State Sanctioned Terror'. *International Studies Quarterly*. 1989. Vol. 33 (2) pp175-178.

regular and normal government⁹⁷. This brings us back to Duvall and Stohl's view that there is a conceptual (and a resulting emotional) problem surrounding the notion of state terrorism. This is more than just the idea that people generally 'reify' the actions of the State a process which has been noted by Greisman, Wardlaw, and Perdue⁹⁸. It is one which results from the fact that the State is typically conceived or understood in the terms of force and violence (to which one can add 'territory' because of the nature of the State)⁹⁹. A view also held by Skubiszewski who said that in "terms of law, in contrast to the language of politics and diplomacy, the State cannot perpetrate the crime of terrorism"¹⁰⁰.

As for the notion of reification, Wardlaw was impressed by it as a means to (at least partially) explain the neglect of state terrorism, whilst Perdue uses it extensively¹⁰¹. Wardlaw relied heavily on an article by Greisman entitled 'Social Meaning of Terrorism: Reification, Violence and Social Control'¹⁰², while Greisman himself attempted to apply the theoretical contributions of other authors who see social order as a totally human product and the construction of social reality as a process. For such authors people are continually making society and this society produces social human beings. As a result, the 'moral' meanings ascribed to people, events (and presumably words) are

⁹⁷ Groom A.J.R.. 'Coming to terms with terrorism'. *British Journal of International Studies*. Vol.4. 1978. p62 cited in Wardlaw G. *Political Terrorism: Theory, Tactics and Countermeasures*. (Cambridge University Press. Cambridge. 1982.). p11.

⁹⁸ Greisman H.C.. 'Social Meaning of Terrorism: Reification, Violence and Social Control. *Contemporary Crisis*. Vol. 1.1977. pp303-318. Wardlaw G. *Political Terrorism: Theory, Tactics and Countermeasures*. (2nd edition. Cambridge University Press. Cambridge. 1989.). p5-8. Perdue W. *Terrorism and The State: A Critique of Domination Through Fear*. (Praeger. New York. 1989.). p17-19.

⁹⁹ Duvall R.D. and Stohl M. 'Governance by Terror' in Stohl M. (ed.) *The Politics of Terrorism*. (2nd ed. Marcel Dekker. New York. 1983.). pp179-219. p180.

¹⁰⁰ Skubiszewski K. 'Definition of Terrorism'. *Israel Yearbook on Human Rights*. Vol. 19. 1987. pp39-54. p48.

¹⁰¹ Wardlaw G. *Political Terrorism: Theory, Tactics and Countermeasures*. (2nd edition. Cambridge University Press. Cambridge. 1989.). p5-8. Perdue W. *Terrorism and The State: A Critique of Domination Through Fear*. (Praeger. New York. 1989.). p17-19.

¹⁰² Wardlaw G. *Political Terrorism: Theory, Tactics and Countermeasures*. (2nd edition. Cambridge University Press. Cambridge. 1989.). p5. Greisman H.C.. 'Social Meaning of Terrorism: Reification, Violence and Social Control. *Contemporary Crisis*. Vol. 1. 1977. pp303-318.

situationally dependent¹⁰³. Generally speaking reification is said to occur when members of society lend a concreteness and objectivity to social relations and institutions which, though purely conjectural in origin, becomes real in its consequences¹⁰⁴.

In practice, successful rhetorical persuasion is the result of 'identification'¹⁰⁵. A process that involves the creation within the casual observer of an image of themselves, to which the observer can overlay with hope of gain, be this monetary, emotional or cosmic¹⁰⁶. The key factor in influencing the average observer of an act of 'terrorism', is the issue of 'legitimacy'. Legitimacy is a social product and when it extends in a highly abstracted way to governments, these governments and these agents are reified¹⁰⁷. It is not that the individual member of the public identifies with the individual state agents who have committed acts of violence but that they are drawn to identify with the legitimacy they represent¹⁰⁸. It is this that enables

¹⁰³ Wardlaw G. *Political Terrorism: Theory, Tactics and Countermeasures*. (2nd edition. Cambridge University Press. Cambridge. 1989.). p5

¹⁰⁴ Greisman H.C.. 'Social Meaning of Terrorism: Reification, Violence and Social Control. *Contemporary Crisis*. Vol. 1.1977. pp303-318. p304. In Berger and Luckman's words reification is : "...the apprehension of the products of human activity as if they were something else than human products - such as facts of nature, results of cosmic laws, or manifestations of divine will....as facts of nature, results of cosmic laws, or manifestations of divine will...through reification, the world of institution appears to merge with the world of nature". Berger P.L. and Luckman T. *The Social Construction of Reality*. (New York. Doubleday and Company). p82, 84 cited by Greisman H.C.. 'Social Meaning of Terrorism: Reification, Violence and Social Control. *Contemporary Crisis*. Vol. 1.1977. pp303-318. p304. Whilst for Lukas reification occurs when "...a relation between people takes on the character of a thing and thus acquires a 'phantom objectivity,' an autonomy that seems so strictly rational and all-embracing as to conceal every trace of its fundamental nature; the relation between people". Lukas G. *History and Class Consciousness* (MIT Press. Cambridge Mass. 1971) p83-84 Cited by Greisman H.C.. 'Social Meaning of Terrorism: Reification, Violence and Social Control. *Contemporary Crisis*. Vol. 1.1977. pp303-318. p314.

¹⁰⁵ Burke K. *Rhetoric of Motives* (University of California Press. 1966.). p19-23. Cited by Wardlaw G. *Political Terrorism: Theory, Tactics and Countermeasures*. (2nd edition. Cambridge Univ.Press. Cambridge. 1989.). p6. Also cited generally by Greisman H.C.. 'Social Meaning of Terrorism: Reification, Violence and Social Control. *Contemporary Crisis*. Vol. 1.1977. pp303-318.

¹⁰⁶ Greisman H.C. 'Social Meaning of Terrorism: Reification, Violence and Social Control. *Contemporary Crisis*. Vol. 1.1977. pp303-318. p306-7.

¹⁰⁷ Greisman H.C. 'Social Meaning of Terrorism: Reification, Violence and Social Control. *Contemporary Crisis*. Vol. 1.1977. pp303-318. p306-307. Also cited by Wardlaw G. *Political Terrorism: Theory, Tactics and Countermeasures*. (2nd edition. Cambridge University Press. Cambridge. 1989.). p6.

¹⁰⁸ Greisman H.C. 'Social Meaning of Terrorism: Reification, Violence and Social Control. *Contemporary Crisis*. Vol. 1.1977. pp303-318. p306.

official terrorism either not to be recognised at all or accepted as severe but necessary whilst individual terrorism are condemned as morally repugnant¹⁰⁹.

Other authors however suggest that such conceptual problems are not enough to explain academia's neglect of the topic. Herman and G. O'Sullivan for example, claim that academia's focus on (particular) insurgent groups can be seen as a product of the underwriting of such intellectual efforts by Western governments and interested business firms. For them both the supply of terrorist activity and the demand for publicity regarding terrorism can be explained mainly in terms of Western interests and policy not by the action and plans of the terrorists¹¹⁰. Herman and G. O'Sullivan suggest that Western interests, have pushed terrorism to the forefront because they wanted to use the issue of terrorism as an ideological instrument of propaganda and control. These "Western interests" range from simply diverting attention from its own activities and crimes, to justifying arms build-ups, and increasing domestic surveillance to individual parts, specifically discrediting rival politicians and sabotaging peace plans¹¹¹. The result of this is the production of what one could describe as state-sponsored 'intellectuals' who belong to what Herman and G. O'Sullivan term the "terrorism industry". At its largest this terrorism industry consists of "government officials and bodies, governmental and quasi private think tanks and analysts and private security firms". The 'private' section of the industry is heavily interlocked with government intelligence, military and foreign policy agencies and is funded by, and serves, both governments and corporate establishments¹¹². This cultural industry manufactures, refines and packages for distribution, information, analysis and opinions in a topic

109 Wardlaw G. *Political Terrorism: Theory, Tactics and Countermeasures*. (2nd edition. Cambridge University Press. Cambridge. 1989.). p8.

110 Herman E.S. and O'Sullivan G. 'Terrorism' as Ideology and Cultural Industry' in George A.(ed.) *Western State Terrorism*. (Polity Press. Oxford. 1991.). pp39-75. p39.

111 Herman E.S. and O'Sullivan G. "'Terrorism' as Ideology and Cultural Industry" in George A.(ed.) *Western State Terrorism*. (Polity Press. Oxford. 1991.). pp39-75. p40.

112 This 'terrorism industry' is also a multinational industry with close ties between governments and private persons, institutions and experts in and among the United States, Israel, Great Britain, Canada, Germany, South Africa, South Korea, Taiwan and other members of the Free World. Herman E.S. and O'Sullivan G. *The Terrorism Industry: The Experts and Institutions that Shape our View of Terrorism*. (Pantheon. New York.1989.). p7-8.

called 'terrorism'. The industry comprises of a public sector of government agencies and officials who establish 'policy' and provide selective facts and official opinions on these 'terrorist' activities to the media in press releases and conferences, interviews and in speeches, hearings and reports¹¹³. The analysts supplied by the 'terrorism industry' in turn constitute the media's "experts", and once installed within the mainstream media, they establish and expand the terms and agenda demanded by the State. In accordance with the agenda of the Western states, these experts, invariably see the west as the "victim" of terrorism¹¹⁴. In contrast:

"Neither the African National Congress (ANC) nor the Mutual Support group of Guatemala can fund data banks or theoretical analysis of the state's terrorism that has killed scores of thousands in their countries and has posed an ongoing threat to the survivor populations".¹¹⁵

In light of this type of analysis of the field of terrorism studies, Alexander George declared that the field of "terrorology" is "intellectually sterile, if not bankrupt", because the construct of 'terrorism' employed by it was not developed in response to honest puzzlement about the real world, but rather in response to ideological pressures ¹¹⁶.

Yet one does not have to accept either Alexander George's conclusion, or all of the detail of Herman and G. O'Sullivan's analysis, to see how the broad economic processes that they describe may be at work, and why a political economy approach can contribute to an explanation for academia's neglect of state terrorism. For example even the process of 'reification' seems to be inseparable from economics. One of the reasons suggested as to why identification with the victims of state violence is problematic is because large numbers of the population participate to

¹¹³ Herman E.S. and O'Sullivan G. ' 'Terrorism' as Ideology and .Cultural Industry' in George A.(ed.) *Western State Terrorism*. (Polity Press. Oxford. 1991.). pp39-75. p40.

¹¹⁴ Herman E.S. and O'Sullivan G. ' 'Terrorism' as Ideology and .Cultural Industry' in George A.(ed.) *Western State Terrorism*. (Polity Press. Oxford. 1991.). pp39-75. p46.

¹¹⁵ Herman E.S. and O'Sullivan G. *The Terrorism Industry: The Experts and Institutions that Shape our View of Terrorism*. (Pantheon. New York.1989.). p8.

¹¹⁶ George A. 'The Discipline of Terrology' in George A.(ed.) *Western State Terrorism*. (Polity Press. Oxford. 1991.). p76-101. p92.

some degree in government-approved acts of violence. In Greisman's words:

"When people identify with the victim of a terrorist act, the act becomes terrorist. If they identify with the perpetrator, it becomes something more justified, plausible or praiseworthy. In this sense western populations are unique insofar as industries, and by extension their employees, are active participants in official terrorism. As a result, identification with the victim who may be a simple peasant, is rendered difficult"¹¹⁷.

Although it is not simply for this reason that such identification and reification occurs, otherwise identification and reification would be confined solely to those working within this 'military-industrial complex'. Greisman claimed that the style of behaviour, its setting, and other cultural variables also help to account for the different social meanings assigned to similar acts of terrorism. For him:

"The official terrorist has an existence whose appeal has been forwarded by the media and the agents of socialisation on a large scale. His private life is admirable to most members of an industrial middle-class, while the individual terrorist leads an unsavoury and precarious underground life devoid of domestic peace and respectability. Official terrorism is premised on rationality [of the state] and a businesslike system of costs and benefits. Individual terrorism issues from the passions, and is suspect. The destructive devices of official terrorism are standardised, "quality-controlled," and generally dependable.....The [individual terrorists] devices are covert and resemble the terrorist themselves who operate out of uniform, and hence, out of control"¹¹⁸.

The difference is, as already noted, further reinforced by one's choice of weapons, targets¹¹⁹, and stylistic variables between the acts committed by insurgent terrorists and state terrorism also contribute to the perceived differences¹²⁰. For Wardlaw it is:

¹¹⁷ Greisman H.C. 'Social Meaning of Terrorism: Reification, Violence and Social Control. *Contemporary Crisis*. Vol. 1.1977. pp303-318. p312.

¹¹⁸ Greisman H.C. 'Social Meaning of Terrorism: Reification, Violence and Social Control. *Contemporary Crisis*. Vol. 1.1977. pp303-318. p312.

¹¹⁹ Wardlaw G. *Political Terrorism: Theory, Tactics and Countermeasures*. (2nd edition. Cambridge University Press. Cambridge. 1989.). p6-7.

¹²⁰ Wardlaw G. *Political Terrorism: Theory, Tactics and Countermeasures*. (2nd edition. Cambridge University Press. Cambridge. 1989.). p7 and p6.

"the element of uncertainty that plays a large part here. State terrorism may be brutal and unjust but, in general one knows what activities not to indulge in order to escape its immediate and personal intrusion. Individual terrorism by contrast bears no necessary relation to one's own behaviour. It appears random and therefore more dangerous"¹²¹.

However Greisman's explanation also notes that other factors which one could described as either political or economic may be at work in explaining how this particular aspect of social reality is constructed. For Greisman notes that:

"The variable modalities of meaning that attended terrorism are the products of socially constructed realities. *Some groups have greater ability to construct reality for less influential groups, and the former tend to control the process by which social meanings are assigned.* As this reality is constructed, the "spectators" of terrorist acts are encouraged to identify with the perpetrators or victims as the situation warrants"¹²².

It can be suggested that this phantom objectivity is encouraged by persons who will gain profit or power from such a perception. Unfortunately Greisman does not satisfactorily explain why the media acts in the way it does. Nor is there space here.

The idea that economic pressures of supply and demand can influence the output of academia has also been noted by other authors in relation to other areas of the social sciences. For example, from their examination of the work on the definition of the State, Ferguson and Mansbach claimed that: "governmental support, offices in academic associations, promotion and merit awards and in general disciplinary prestige" are at stake in these battles amongst intellectual protagonists. Whilst for the "policy makers", on the other hand, "control of concepts is a source of unique authority and legitimacy". The result is what Ferguson and Mansbach call as the "1984" function of definitions, that

¹²¹ Wardlaw G. *Political Terrorism: Theory, Tactics and Countermeasures*. (2nd edition. Cambridge University Press. Cambridge. 1989.). p11. This author is of course not in agreement with his description of state terrorism.

¹²² Greisman H.C. 'Social Meaning of Terrorism: Reification, Violence and Social Control. *Contemporary Crisis*. Vol. 1.1977. pp303-318. p303.

is: "[d] ecisions regarding definitions, then, may actually *follow* analysis rather than preceding it as we commonly assume"¹²³ .

So whilst it is true that Western universities may have a great deal of control if not autonomy over the state funding that they receive from the State, nevertheless academia exists in a market system, and it is increasingly reliant upon external funding from private sources and government contracts. As a result of this structure, intellectual service can be seen to largely reflect market forces, rather than being determined by it. As Herman and O'Sullivan put it, ideas, and those who produce them, can be bought and subsidised by those with the need and resources to provide the effective demand¹²⁴. Therefore one major reason for academia's overwhelmingly concern with insurgency terrorism is the (unsurprising) fact that states' themselves are more interested in giving out research money to 'academics' who study threats to the State rather than the threat that their particular state poses to others¹²⁵. In addition to this direct influence of the State itself, are indirect spin-offs. For example, the fact that in 1985 the U.S. government alone had 18,000 people dealing with the issue of terrorism as they saw it¹²⁶ means that a large amount of data bases are created many of which provide valuable resources for like-minded academics. Other support for this broad political economy approach comes from Reid, a Professor of Information Science at Rutgers University. After studying the growth of the literature on terrorism she concluded that as the newspapers and television media covered terrorism, there was a corresponding increase in magazine and journal citations, followed by the creation of specialised periodicals and databases in response to the

¹²³ Ferguson Y.H. and Mawbach R.W. *The State, Conceptual Chaos and the Future of International Relations Theory*. (Lynne Reinner. London. 1989.). p84.

¹²⁴ Herman E.S. and O'Sullivan G. *The Terrorism Industry: The Experts and Institutions that Shape our View of Terrorism*. (Pantheon. New York. 1989.). p8

¹²⁵ Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature*. (North Holland. Amsterdam. 1984.) .p104 or Stohl M. 'National Interests and State Terrorism'. *Political Science*. Vol 36 (1) July. 1984. pp37-52. p38. Alternatively, Crelinsten R.D. 'Terrorism as Political Communication: The Relationship between Controller and Controlled' in Wilkinson P. and Stewart A.M. *Contemporary Research on Terrorism*. (Aberdeen University Press. Aberdeen. 1987.). pp3-21. p4.

¹²⁶ Herman and O'Sullivan appear to be citing *The Report of the Vice President's Task Force on Combatting Terrorism* (U.S.. Superintendent of Documents. 1986) p10. Herman E.S. and O'Sullivan G. ' 'Terrorism' as Ideology and Cultural Industry' in George A.(ed.) *Western State Terrorism*. (Polity Press. Oxford. 1991.). pp39-75. p53.

new subject area¹²⁷. However whilst all of the explanations for the media's concentration on insurgency terrorism are beyond the scope of this thesis, there is little doubt that a major one of them is the fact that the mainstream media relies upon the State for much of its 'hard', or serious news stories, and in this way follows its agenda and that of other political and economically powerful institutions in society¹²⁸.

Despite Schmid's claim that many academics in the field of terrorism studies are in all likelihood ideologically closer to the establishment than to the forces opposing state power¹²⁹, it would be incredible to accuse those Western academics who work in publicly funded universities of being 'state functionaries' purely because they are ultimately paid by the State, or because they work within a market system. This said, it would be equally implausible to say that economic factors do not play a role in the production of an 'antiseptic' view of state violence by academia. Western academics live in a free market system and themselves are part of society, and even those who are aware of social science methodology may find it difficult to step back from the values of their own individual socialisation to become completely 'objective' social scientists. However despite the relative neglect of the topic, some academics have attempted to address the notion of state terrorism, and it is for this reason -and to provide context for the following explanation of the aims of the thesis- that the next section of this introductory chapter constitutes a review of particular pieces of academic work on the topic of state terrorism.

¹²⁷ Dr. E. Reid as reviewed and interviewed by Arnold. Arnold S.E. 'Researching Terrorism'. *Information Today*. Vol. 9(7). July-Aug. 1992. pp13-14. p13.

¹²⁸ Gans H. *Deciding What's News*. (Vintage. New York. 1979.). cited without page reference by Perdue W. *Terrorism and the State: A Critique of Domination Through Fear* (Praeger. New York. 1989.). p65. See also Table 8.1 entitled 'Mass Media Sources Used in Covering Terrorism' in Herman E.S. and O'Sullivan G. *The Terrorism Industry: The Experts and Institutions that Shape our View of Terrorism*. (Pantheon. New York. 1989.). p194.

¹²⁹ Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland. Amsterdam. 1984.). p104.

A Selective Literature Review.

The following selective literature review does not examine all, or even a majority of the works read by this author, for such a piece would be extremely long and tedious as it would involve many hundreds of books or articles. Instead this section comprises an examination of a number of noteworthy works on the topic of terrorism which devote some if not all of their space to the notion of state terrorism. The aim, is not to give a critique of each work, rather it is to identify their attempts to define state terrorism and to show the need for an fresh attempt to define the concept of state terrorism, as well as to provide context for an understanding of many of the secondary aims of the thesis.

As already noted at the start of this chapter, prior to embarking upon the Ph.D. it appeared that little thought was given to the use of the term 'terrorism' by authors within the field of terrorism studies. More specifically a definition was by no means always stated within each piece of literature on the topic. Furthermore when a definition was actually produced its application was invariably far from methodical or thorough.

The first of these two hypotheses is sustained both by various authors and the author's subsequent reading. The legal specialist Friedlander, for example, claimed that both the literature generally, as well as the legal literature on the topic, was not very strong on definitions¹³⁰. The same tendency appeared to apply to the work on state terrorism. Gibbs for example claimed that writers on Nazi terror are prone to avoid an explicit definition of terrorism¹³¹. This is a view which seems to be

¹³⁰ R. Friedlander in interview with Hoffman in Hoffman R.P. *Terrorism A Universal Definition* (Claremont Graduate School. Ph.D. 1984). p89. A fuller citation of Friedlander reads: "[s]urprisingly the literature is not very strong on definition even the legal literature. I think that there are only a couple of us and there's Brian Jenkins at Rand (who's not a lawyer), Jordan Paust, maybe one or two others - and myself - who have even an article or chapter on definition, that's all".

¹³¹ Gibbs J.P. 'Conceptualization of Terrorism'. *American Sociological Review*. Vol. 54. 1989. pp329-340. Footnote 6, p333. Various authors do not define the term despite the titles of their books or the importance of terror to their topic. Even Dallin and Breslauer who did define the term in the second paragraph of their book *Political Terror in Communist Systems* fail to expressly show how each action undertaken by the Communist system fits their definition; instead they describe the workings of the

equally valid for those writing on the Soviet Union or totalitarianism¹³². Whilst in regards to historians' use of such terms in reference to an even earlier era, the historian Emsley wrote: 'What is meant precisely by the terms such as 'repression' and 'Pitt's reign of terror' during this decade are questions rarely asked"¹³³. Generally speaking, the historians tended to use ill-defined terminology, whilst occasionally social scientists studying contemporary regimes might 'improve' upon this with an equally vague definition¹³⁴.

The fact that many authors do not define what they mean when they use the term terrorism (or whatever variant), despite the importance of the term to their topic, is perhaps most apparent within the general literature on terrorism. Alternatively authors on the topic of terrorism acknowledge that state terrorism exists but nevertheless confine their analysis to incidents of revolutionary terrorism¹³⁵. A fine example of this technique of acknowledging the possibility of state terrorism, only to ignore it was provided by Tupman noted earlier¹³⁶. This latter

system as a whole. See Dallin A. and Breslauer G.W. *Political Terror in Communist Systems*. (Stanford University Press. Stanford, California. 1970). p1.

¹³² Friedrich C.J. and Brzezinski S.K. *Totalitarian Dictatorship and Autocracy*. (Praeger. New York. 1965.). Their work does not contain a definition despite the inclusion of a terroristic police within their six-point syndrome. The same can be said of Arendt H. *The Origins of Totalitarianism*. (3rd.ed. George Allen and Unwin. London.1966.) for despite referring to "terror" twenty times in her index, the term is not defined on any of these pages. Similarly Conquest R. *The Great Terror: A Reassessment*. (Pimlico. London.1992.). does not define the term despite the title of his book.

¹³³ Emsley C. 'Repression, 'terror' and rule of law in England during the decade of the French Revolution'. *English Historical Review*. Vol.C. No397. Oct. 1985. pp801-825. p801. Emsley notes that "'Repression' and 'terror', of course are not synonymous. It may help to consider repression as the overt and legal acts of government and its agents, while terror went on under the repressive aegis of official advice, exhortation, and legislation, but involved many private and sometimes illegal activities by loyalists". He also noted the problem of the 'terror' of punishment.

¹³⁴ For example Thurston wrote, "[t]error [is] defined here simply as mass arrests of innocent people and for the moment without reference to the State's motives, certainly existed in the Soviet Union from 1935 to 1939". Thurston R.W. 'Social Dimensions of Stalinist Rule: Humour and Terror in the USSR'. *Journal of Social History*. Vol. 24 (3). 1991. pp541-562. p542.

¹³⁵ Hocking commenting on Lacquer W. *Terrorism*. (Weidenfeld and Nicholson. London. 1977.) p7: Wilkinson P. *Terrorism and the Liberal State*. (Macmillan. London. 1977.). pp97-102 and Jenkins B. 'International Terrorism: A New Mode of Conflict' in D. Carlton and C.Schaerf (eds) *International Terrorism and World Security* (Croom Helm. London. 1975). p14,19. Hocking J. 'Orthodox Theories of Terrorism': the Power of Politicised Terminology'. *Politics* (Sidney). Nov. 1984. pp 103-110. p105.

¹³⁶ In his grandly titled paper 'Towards a typology of terrorism: Criticisms and Definitions in the Field of Political Violence'. Tupman noted only The Oxford English Dictionary's state-centric use of the term terrorism, before saying: "Let us leave the

tendency could explain why Schmid was surprised to find that as many as 26% of the 109 definitions of terrorism which he had identified explicitly allowed for the state to commit acts of terrorism¹³⁷. However, rather than review the many general books on the topic that ignore the idea or fail to define what they mean by terrorism by those in power, this selective literature review will identify and criticise the definitions contained within a number of notable books that deal with the issue, starting with widely respected general books on the topic of terrorism. These are Wardlaw's *Political Terrorism: Theory, Tactics and Countermeasures*; Wilkinson's *Terrorism and the Liberal State*; and Schmid's *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature*.

Wardlaw defines "political terrorism" as:

"the use, or threat of use, of violence by an individual or a group, whether acting for or in opposition to established authority, when such action is designed to create extreme anxiety and/or fear-inducing effects in a target group larger than the immediate victims with the purpose of coercing that group into acceding to the political demands of the perpetrators"¹³⁸.

The most obvious problem with his choice of words is that his sentence "the use, or threat of use, of violence by an individual or a group" does not seem to allow the State to commit direct acts of terrorism. However it is possible to deduce a state centric interpretation from other sections of the book which make references¹³⁹. Even then if one accepts a very wide interpretation of the term 'group' to include the State, the rest of the definition fails to distinguish the State's use of violence to enforce its laws within its area of domestic jurisdiction from an act of state terrorism, for the laws of contemporary states aim to deter others as

issue of state terror for the moment". Tupman B. *Towards a Typology of Terrorism: Criticisms and Definitions in The Field of Political Violence*. (Broomfield Papers. University of Exeter. 1989.). p2.

¹³⁷ Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature*. (North Holland. Amsterdam.1984.). p103.

¹³⁸ Wardlaw G. *Political Terrorism: Theory, Tactics and Countermeasures*. (Cambridge University Press. Cambridge. 1982.). p16. He uses italics.

¹³⁹ Wardlaw G. *Political Terrorism: Theory, Tactics and Countermeasures*. (Cambridge University Press. Cambridge. 1982.). p10-13.

well as to punish the victim and protect the innocent¹⁴⁰. Likewise his definition fails to distinguish the State's use of violence in war from acts of state terrorism committed outside its area of domestic jurisdiction. These two problems (amongst others) also hit most of the other definitions reviewed here, including those of Wilkinson and Schmid in the said books. Wilkinson for example defined "political terrorism" as:

"the systematic use of murder and destruction, and the threat of murder and destruction, to terrorize individuals, groups, communities or governments into conceding to the terrorist's political aims"¹⁴¹.

Wilkinson's use of the phrase "systematic use of murder and destruction" within his definition allows only a limited number of events to be included, for it incorporates such a high threshold of violence. Yet in another sense the definition is too wide in that it would fail to distinguish state terrorism from those similar actions which are generally referred to as genocide, war or war crimes. One can add further precision to his definition by making use of his basic typology of terrorism¹⁴². He uses the term "epiphenomenal terror", to denote: "those random but often extremely deadly acts of large-scale terror which occur in the course of major outbreaks of intra-specific violence" such as mass insurrection, and both civil and international wars. He also notes that: "such acts of terror essentially occur as an unintended consequence of the depredations and devastation of war and mass violence". However he prefers to label perpetrators of such violence when it occurs in war, war criminals¹⁴³. As for systematic politically motivated terrorism, he identifies three types:

"(i) *repressive* terrorism, which is used most commonly but not exclusively by states to suppress, put down or constrain certain groups or individuals; (ii) sub-revolutionary terrorism, which is employed for a variety of purposes short of

¹⁴⁰ According to Morris every criminal law system in the world, except Greenland has deterrence as its primary and essential postulate. Morris N. 'Impediments to Penal Reform'. *The University of Chicago Law Review*. 1966. Summer. 33 (4). pp 627-656. p631.

¹⁴¹ Wilkinson P. *Terrorism and the Liberal State*. (2nd ed. Macmillan. London. 1986.). p56.

¹⁴² Wilkinson P. *Terrorism and the Liberal State*. (2nd ed. Macmillan. London. 1986.). p57.

¹⁴³ Wilkinson P. *Terrorism and the Liberal State*. (2nd ed. Macmillan. London. 1986.). p57.

revolutionary seizure of power such as coercion or intimidation, vengeance or 'punishment'; and (iii) revolutionary terrorism, which has the long-term objective of bringing about political revolution, i.e. a fundamental change in the power structure, and often, in addition, fundamental changes in the socio-economic order"¹⁴⁴.

However this 'definition' is still too wide in that it would label a legal policy of genocide like that undertaken by the Khmer Rouge in Cambodia after it had won a civil war as state terrorism. Here it is also worth noting that Wilkinson acknowledges that he is: "concerned almost exclusively with the use of revolutionary and sub-revolutionary terrorism by non-governmental groups"¹⁴⁵, for whilst this process is commonplace, the awareness of it occurring is not.

Schmid came to the following definition, which is not only rather lengthy, but fails to distinguish the State's use of violence to enforce its laws within its area of domestic jurisdiction from an act of state terrorism. This is because the laws of contemporary states aim to deter others, unless one interprets his reference to "extranormal" as meaning the legislation. For him:

"Terrorism is a method of combat in which random or symbolic victims serve as instrumental target of violence. These instrumental victims share group or class characteristics which form the basis of their selection for victimization. Through previous use of violence or the credible threat of violence other members of that group or class are put in a state of chronic fear (terror). This group or class, whose members' sense of security is purposively undermined, is the target of terror. The victimization of the target of violence is considered extranormal by most observers from the witnessing audience on the basis of its atrocity; the time (e.g. peacetime) or place (not a battlefield) of victimization or the disregard for rules of combat accepted in conventional warfare. The norm violation creates an attentive audience beyond the target of terror; sectors of this audience might in turn form the main object of manipulation. The purpose of this indirect method of combat is either to immobilize the target of terror in order to produce disorientation and/or compliance, or to mobilise secondary targets of demands (e.g. a government) or

¹⁴⁴ Wilkinson P. *Terrorism and the Liberal State*. (2nd ed. Macmillan. London. 1986.). p57.

¹⁴⁵ Wilkinson P. *Terrorism and the Liberal State*. (2nd ed. Macmillan. London. 1986.). p57.

targets of attention (e.g. public opinion) to changes of attitude or behaviour favouring the short or long-term interests of the users of this method of combat"¹⁴⁶.

As already noted the tendency not to define their terms despite the titles of their books or the importance of terror to their topic is also apparent within the classic or historical literature on the topic. For example despite referring to "terror" twenty times in her index to her book *The Origins of Totalitarianism*, Arendt did not define the term on any of these pages¹⁴⁷. Likewise Friedrich and Brzezinski did not define the meaning of the term despite the inclusion of a the notion of "terroristic police" within their six-point syndrome for what constitutes the concept of totalitarianism contained within their classic *Totalitarian Dictatorship and Autocracy*¹⁴⁸. Similarly despite entitling his book *The Great Terror: A Reassessment*, Conquest did not define the term, which makes any assessment difficult¹⁴⁹. Dallin and Breslauer did far better. In the second paragraph of their book *Political Terror in Communist Systems* they wrote:

"By 'political terror' we mean the arbitrary use by organs of political authority, of severe coercion against individuals or groups, the credible threat or use, or the arbitrary extermination of such individuals or groups"¹⁵⁰.

Unfortunately they failed to define what they meant by "severe coercion" and the issue of whether arbitrary meant illegal was not answered. In addition they failed to show how each action undertaken by the Communist system fits their definition, instead they described the workings of the system as a whole.

These views on the literature on what can be termed the classical 'reigns of terror' or 'terrorist regimes', such as Robespierre's France,

¹⁴⁶ Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland. Amsterdam. 1984.). p111.

¹⁴⁷ Arendt H. *The Origins of Totalitarianism*. (3rd.ed. George Allen and Unwin. London. 1966).

¹⁴⁸ Friedrich C.J. and Brzezinski S.K. *Totalitarian Dictatorship and Autocracy*. (Praeger. New York. 1965.).

¹⁴⁹ Conquest R. *The Great Terror: A Reassessment*. (Pimlico. London.1992).

¹⁵⁰ Dallin A. and Breslauer G.W. *Political Terror in Communist Systems*. (Stanford University Press. Stanford, California. 1970). p1.

the Soviet Union or Nazi Germany (the latter two might be termed 'totalitarian') can be seen to be of great importance in that much, if not most, of the relatively small amount of work produced on state terrorism appears to be the work of historians on these. This latter point is supported by the comments of various authors as well as statistical evidence. Perdue for example claimed that, there is "a recurring tendency" within that literature "to specify notorious regimes" such as the Jacobins, the Nazis, the Stalinists¹⁵¹. This goes beyond the tacit admission of the existence of state terrorism. Incidentally it was the latter two of these regimes which Thorton was contemplating when he wrote in 1964 that "[t]here is already an extensive literature on enforcement terror"¹⁵². Along with Thorton and Perdue, Anderson too appears to support this authors preliminary observation when he wrote:

"During the post-war period state terrorism has been analysed as a function of the totalitarian state; the models have been, despite their own vast differences, Stalinism and Nazism. The images and theories of such state terror are owed principally, to Orwell and Arendt. And the central image of state terrorism indelibly linked with Stalinism and Nazism is the police state, implacable and all-knowing, total, as in the totalitarian state"¹⁵³.

Anderson's view appears to be a slight exaggeration even in relation to the area of direct domestic state terrorism, for much of the work done by political scientists has examined 'authoritarian' rather than 'totalitarian' regimes, especially those in Central and Latin America. Support for this claim can be seen in the results of a content analysis of the relevant references within the bibliographical section of Schmid and Jongman's book *Political Terrorism: A new guide to actions, authors,*

¹⁵¹ Perdue also notes that they "avoid placing such regimes in historical and global contexts". Perdue W. *Terrorism and The State: A Critique of Domination Through Fear*. (Praeger. New York. 1989.). p15. Perdue also usefully points to a more specific area of the terrorism literature in which this trend exists. He noted that conventional conceptions on nuclear terrorism also reduce the level of debate ignoring the arsenals of the State and actively dealing with the renegade scenario. Perdue W. *Terrorism and The State: A Critique of Domination Through Fear*. (Praeger. New York. 1989.). p.71.

¹⁵² More precisely the Soviet Union rather than just Stalin's regime. Thorton T.P. 'Terror as a Weapon of Political Agitation' in Eckstein H.(ed.). *Internal War Problems and Approaches* (The Free Press of Glencoe. Collier Macmillan. London. 1969.). pp71-100. p73.

¹⁵³ Anderson K. 'Beginning to Theorise about Internal State Terrorism in the Third World'. *Terrorism and Political Violence*. Vol. 2 (1). 1990. pp106-111. p107.

concepts and databases. A content analysis of the English language references within the sub-section entitled 'Regime Terrorism and Repression' reveals that 43% of the works could be assigned to the particular (geographical and to a lesser extent historical) category which this author refers to as the 'classics', that is Totalitarianism, Soviet Union, Nazi Germany, Fascism or revolutionary France. This figure rises to at least 63% if Central and Latin American regimes were included¹⁵⁴.

Walter, the author of a famous book on the use of terror by Shaka, an 19th century king of the Zulu tribe, is however one author who does attempt to define his terms, and although those produced are not particularly practical, they do contribute to the overall process of identifying state terrorism. In his book *Terror and Resistance: A Study in Political Violence* he noted that "terror", may mean either the: "psychic state - extreme fear", or "the thing that terrifies - the violent event that produces the psychic state"¹⁵⁵. He then went on to describe the "process of terror" as a: "a compound with three elements; the act or threat of violence, the emotional reaction, and the social effects"¹⁵⁶. Stripped of the essentials, "a dramaturgic model of the terror process", would according to Walter, include three actors: a source of violence, a victim and a target. In this process, the victim perishes but the target reacts to the spectacle or the news of that destruction with some manner or submission or accommodation, such as withdrawing his resistance or by inhibiting his potential resistance¹⁵⁷. He distinguishes between military terror "the aim of which is to paralyze the enemy, diminish his resistance, and reduce his ability to fight, with the ultimate purpose of

¹⁵⁴ Rounded up figures. Of the references in English, 49 could not be placed in one 'geographical' category. 63 were on the Soviet Union (32), Totalitarianism(11), Nazi Germany(13), Fascism(2) and Revolutionary France(3) and 4 with Communism in the title for this grouping included two on Nazi Germany and the USSR. The remaining 85 were on Africa (10), Middle East (7), Europe (5), Asia (15), Latin and Central America (35), U.S.A. (19), for this includes one one U.S. and Middle East and 5 on U.S. support for regimes in Latin America. Schmid A.P. and Jongman A.J. *Political Terrorism: A new guide to actions, authors, concepts and databases*. (SWIDOC. Amsterdam. 1988.). pp259-269.

¹⁵⁵ Walter E.V. *Terror and Resistance: A Study in Political Violence*. (Oxford University Press. Oxford. 1969.). p5.

¹⁵⁶ Walter E.V. *Terror and Resistance: A Study in Political Violence*. (Oxford University Press. Oxford. 1969.). p5.

¹⁵⁷ Walter E.V. *Terror and Resistance: A Study in Political Violence*. (Oxford University Press. Oxford. 1969.). p9.

destroying him";¹⁵⁸ and civil terror which "is frequently practised against the unarmed non-combatant population by its own leaders"¹⁵⁹. Walter notes that this raises the question of when violence inflicted by men in authority is legal punishment and when it is not¹⁶⁰. He answers this by saying that:

"The conditions of legality imply that there must be a way of being innocent. If there is no path left open to avoid transgression, or if people are bound to be charged falsely with offenses they do not commit, then it is not possible to be innocent. In the terror process, no one can be secure, for the category of transgression is, in reality, abolished. Anyone may be a victim, no matter what action he chooses. Innocence is irrelevant"¹⁶¹.

Like Walter, Thornton also produced a general piece of work on terrorism in the 1960's prior to the deluge of books on contemporary terrorism, and he too wrote about "enforcement terror" as well as insurgency terror. More specifically he wrote that: "in an internal war situation, terror is a symbolic act designed to influence political behaviour by extranormal means, entailing the use or threat of violence"¹⁶². In this way, he too, distinguishes between normal legal punishment and extraordinary acts, but unfortunately he did not define what he meant by "extranormal means".

Perhaps the most influential contemporary writers on the topic of state terrorism by more recent regimes are Stohl and Lopez, who in addition to writing earlier articles on the topic edited three books on the subject in the 1980s. In their first book: *The State as Terrorist: The Dynamics of Global Violence and Repression*, Stohl wrote a chapter specifically dealing with the 'International Dimensions of State Terrorism'. There he clearly notes that by such terrorism he meant: "The purposeful act or

¹⁵⁸ Walter E.V. *Terror and Resistance: A Study in Political Violence*. (Oxford University Press. Oxford. 1969.). p14.

¹⁵⁹ Walter E.V. *Terror and Resistance: A Study in Political Violence*. (Oxford University Press. Oxford. 1969.). p22.

¹⁶⁰ Walter E.V. *Terror and Resistance: A Study in Political Violence*. (Oxford University Press. Oxford. 1969.). p22.

¹⁶¹ Walter E.V. *Terror and Resistance: A Study in Political Violence*. (Oxford University Press. Oxford. 1969.). p26.

¹⁶² Thornton T.P. 'Terror as a Weapon of Political Agitation' in Eckstein H. (ed). *Internal War Problems and Approaches*. (The Free Press of Glencoe, Collier Macmillan. London. 1964.). pp71-100. p73.

threat of violence to create fear and/or compliant behaviour in a victim and/or audience of the act or threat"¹⁶³. He also notes that whilst by convention the threat of nuclear deterrence is not normally labelled 'terrorism' by scholars of international relations, it meets the two denotative criteria that the commonly used dictionary definition of the term sets forth¹⁶⁴. Also, of direct interest to this thesis, is the fact that Stohl described *Mossad* 's assassinations of Palestinian agents in Cyprus, Algeria, Norway, Athens, Beirut and Paris as "a highly effective technique of political terrorism"¹⁶⁵. He also labelled Israel's destruction of the Iraqi nuclear reactor in 1981 as an example of an act of state terrorism, on the basis that "[t]he bombing raid had.... a wider audience than the immediate victim of the raid" it sent a message to both the Iraqis and other Arab neighbours about Israel's position on the development of nuclear capability¹⁶⁶.

Moreover within the 'Introduction' to this book, Stohl (along with Lopez) used the same definition in reference to internal state terror¹⁶⁷. Their reference to internal state terrorism can be deduced from both the statement that they did "not consider all coercive acts of the state to be terrorist"¹⁶⁸ and from the fact that they distinguished it from other phenomena with which it may be concurrent and co-ordinated namely

¹⁶³ Stohl M. 'International Dimensions of State Terrorism' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Connecticut. 1984.). pp43-58. p43.

¹⁶⁴ Stohl M. 'International Dimensions of State Terrorism' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Connecticut. 1984.). pp43-58. p48.

¹⁶⁵ Stohl M. 'International Dimensions of State Terrorism' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Connecticut. 1984.). pp43-58. p53.

¹⁶⁶ Stohl M. 'International Dimensions of State Terrorism' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Connecticut. 1984.). pp43-58. p45.

¹⁶⁷ They wrote, "*terrorism* is the purposeful act or threat of violence to create fear and/or compliant behaviour in a victim and/or audience of the act or threat" Stohl M. and Lopez G.A. 'Introduction' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Connecticut. 1984.). pp3-10. p7. Likewise in his other chapter Lopez wrote that when he considered the government as terrorist his views are in keeping with those expressed within the introduction. Lopez G.A. 'A Scheme for the Analysis of Government as Terrorist' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Connecticut. 1984.). pp59-82. p59.

¹⁶⁸ Stohl M. and Lopez G.A. 'Introduction' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Connecticut. 1984.). pp3-10. p8.

"oppression" and "repression"¹⁶⁹. Unfortunately this definition does not distinguish state terrorism from ordinary law enforcement.

In their chapter entitled 'South African State Terror: The Costs of Continuing Repression' Denemark and Lehman use a definition which can be described as 'Stohl-like'. For them state terror is the relatively amorphous extreme on the continuum of repression¹⁷⁰ and may be viewed as:

"the more precise and deliberate act of inflicting harm on an individual or group in order to change the nature of their behaviour and/or instil fear in other individuals or groups" ¹⁷¹.

Although this is no more precise than Stohl and Lopez's definition. In his chapter entitled 'Government Terror in the United States: An Explanation of Containment Policy', Homer notes that most of the literature on terrorism concentrates on 'insurgency' terrorism or 'terrorism from below.'¹⁷². He also notes that the concepts 'reign of terror', 'establishment terrorism', 'terror from above' and 'government terror' define acts of violence by those in power against those out of power. For Homer what differentiates such acts of terror from acts of force or violence is that the message of the former is conveyed to those who are not harmed directly¹⁷³. Yet, he then notes that difficulties arise immediately with these preliminary (attempts at) definitions. For example one has difficulty in deciding whether an act must be illegal to

¹⁶⁹ Stohl M. and Lopez G.A. 'Introduction' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Connecticut. 1984.). pp3-10. p8.

¹⁷⁰ Denemark R. A. and Lehman H.P. 'South African State Terror: The Costs of Continuing Repression' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Connecticut. 1984.). pp143-166. p147.

¹⁷¹ Denemark R. A. and Lehman H.P. 'South African State Terror: The Costs of Continuing Repression' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Connecticut. 1984.). pp143-166. p147.

¹⁷² Homer F.D. 'Government Terror in the United States: An Explanation of Containment Policy' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Connecticut. 1984.). pp167-182. p165.

¹⁷³ Homer F.D. 'Government Terror in the United States: An Explanation of Containment Policy' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Connecticut. 1984.). pp167-182. p168.

constitute a terrorist act¹⁷⁴. He fails to answer his own question and then asserts that because there is no agreed-upon definition he is free to codify terror in which ever way he pleases¹⁷⁵. Indeed, he goes as far as claiming that definitions of government terror are "arbitrary stipulations". He then states that even if a set of definitions could be agreed upon, significant disagreements about the subjective intentions of the actors would mean that final agreement on what constitutes government terror would not be reached¹⁷⁶. Finally Sloan in his chapter entitled 'State Repression and Enforcement Terrorism in Latin America', fails to define "enforcement terrorism". The nearest he gets to this is to claim that it is "the most extreme form of governmental repression", before noting that "assassinations and secret arrests followed by torture, mutilation; and perhaps death can be interpreted as enforcement terrorism"¹⁷⁷. This is, of course, far from being a definition and even as a list, the last part of this is of course too vague, whilst the rest with its high threshold is too precise and too narrow.

In their 1986 book *Government Violence and Repression: An Agenda for Research*, Stohl and Lopez are again involved in the production of a definition this time along with Mitchell and Carleton in an article entitled: 'State Terrorism: Issues of Concept and Measurement'. Here they note that: "[t]he literature on the nature of state terrorism is growing, even if no generally accepted definition has emerged"¹⁷⁸. To prove this latter point they suggest a definition in answer to their own question "What is state terrorism and how do we recognize its

174 Homer F.D. 'Government Terror in the United States: An Explanation of Containment Policy' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Connecticut. 1984.). pp167-182. p168

175 Homer F.D. 'Government Terror in the United States: An Explanation of Containment Policy' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Connecticut. 1984.). pp167-182. p169.

176 Homer F.D. 'Government Terror in the United States: An Explanation of Containment Policy' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Connecticut. 1984.). pp167-182. p171.

177 Sloan J.W. 'State Repression and Enforcement Terrorism in Latin America' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Connecticut. 1984.). pp83-98. p83.

178 Mitchell C., Stohl M., Carleton D. and Lopez G.A. 'State Terrorism: Issues of Concept and Measurement'. in Stohl M. and Lopez G.A. (eds.) *Government Violence and Repression: An Agenda for Research*. (Greenwood Press. NY.1986.). pp1-26. p2.

presence?" which is different to that previously supplied by Stohl and Lopez, but no better in distinguishing terrorism from law enforcement. For Mitchell, Stohl, Carleton and Lopez:

"state terrorism is present when:

- 1) An actor intends to influence the behaviour of a target population.
- 2) The means of influence involve the actor or threat of violence or some victims with whom the target will identify.
- 3) The deliberate effects of such actions are to induce a condition of extreme fear or terror in the target population.
- 4) The actor is the state, its agents, or some approved surrogate group"¹⁷⁹.

Nicolson within a chapter entitled 'Conceptual Problems of Studying State Terrorism' rightly notes that: "we have to be extremely careful with [a] definition"¹⁸⁰. Unfortunately his 'definition' of state terrorism as "the use of acts that induce fear amongst some social group or a whole population, so as to induce them to act in a way they would otherwise not have"¹⁸¹, is not as careful as one would like for it fails to distinguish terrorism from most other uses of violence by the State. A fact which Nicolson himself seems to be aware when he wrote: "I do not want to get embroiled in the question of whether all social control is violence"¹⁸². However his production of a four-fold categorisation of the phenomena¹⁸³ and comments on the issue such as terrorism can take the form of reprisals against admittedly innocent people when used to dissuade people from hostile acts towards an occupying force are (more)

¹⁷⁹ Mitchell C., Stohl M., Carleton D. and Lopez G.A. 'State Terrorism: Issues of Concept and Measurement'. in Stohl M. and Lopez G.A. (eds.) *Government Violence and Repression: An Agenda for Research*. (Greenwood Press. NY.1986.). pp1-26. p14.

¹⁸⁰ Nicholson M. 'Conceptual Problems of Studying State Terrorism'. in Stohl M. and Lopez G.A. (eds.) *Government Violence and Repression: An Agenda for Research*. (Greenwood Press. New York. 1986). pp27-44. p31.

¹⁸¹ Nicholson M. 'Conceptual Problems of Studying State Terrorism'. in Stohl M. and Lopez G.A. (eds.) *Government Violence and Repression: An Agenda for Research*. (Greenwood Press. New York. 1986). pp27-44. p31.

¹⁸² Nicholson M. 'Conceptual Problems of Studying State Terrorism'. in Stohl M. and Lopez G.A. (eds.) *Government Violence and Repression: An Agenda for Research*. (Greenwood Press. New York. 1986). pp27-44. p32.

¹⁸³ "First is the control by a state of its own citizens by methods of terror. Second is its use of colonial situations. Third is the use of terror as a means of prosecuting war, and fourth is the use and support of terror as a form of surrogate war". Nicholson M. 'Conceptual Problems of Studying State Terrorism' in Stohl M. and Lopez G.A. (eds.) *Government Violence and Repression: An Agenda for Research*. (Greenwood Press. New York. 1986). pp27-44. p31-2.

helpful in our quest to identify acts of state terrorism¹⁸⁴, as is his identification of other terrorist methods in war: "are such things as bombing to break the morale (an antiseptic phrase for "frighten") of civilian populations, so as to destroy the support for a war"¹⁸⁵.

The object of Gurr's chapter entitled: 'The Political Origins of State Violence and Terror: A Theoretical Analysis' "is the terroristic use of coercion by the state"¹⁸⁶. Within it Gurr wrote:

"For our purposes we modify Raymond D. Duvall and M. Stohl's definition that terrorism ...is [coercive, life threatening] action intended to induce sharp fear and through that agency to effect a desired outcome in a conflict situation". The specification of *coercive, life-threatening* action is ours. Regimes do many coercive things to induce compliance: They threaten, arrest and jail, fine and confiscate as well as murder. It is plausible both analytically and psychologically to limit the concept of state terrorism to coercion that takes or grossly endangers the lives of its targets"¹⁸⁷.

Unfortunately this author would suggest that this narrows the concept to an unacceptable extent especially if one considers that the State is prepared to escalate its violence to the point of "life threatening" behaviour if attempts to arrest are resisted with sufficient force. Gurr also makes the interesting claim that "state terror" implied a patterned activity in which instrumental violence recurs often enough so that threats of similar violence, made then or later, have their intended effects on conflict outcomes¹⁸⁸.

¹⁸⁴ Nicholson M. 'Conceptual Problems of Studing State Terrorism'. in Stohl M. and Lopez G.A. (eds.) *Government Violence and Repression: An Agenda for Research*. (Greenwood Press. New York.1986). pp27-44. p33.

¹⁸⁵ Nicholson M. 'Conceptual Problems of Studying State Terrorism'. in Stohl M. and Lopez G.A. (eds.) *Government Violence and Repression: An Agenda for Research*. (Greenwood Press. New York.1986). pp27-44. p33.

¹⁸⁶ Gurr T.R. 'The Political Origins of State Violence and Terror: A Theoretical Analysis' in Stohl M. and Lopez G.A. (eds.) *Government Violence and Repression: An Agenda for Research*. (Greenwood Press. New York. 1986.). pp45-72. p45.

¹⁸⁷ Gurr T.R. 'The Political Origins of State Violence and Terror: A Theoretical Analysis' in Stohl M. and Lopez G.A. (eds.) *Government Violence and Repression: An Agenda for Research*. (Greenwood Press. New York. 1986.). pp45-72. p46.

¹⁸⁸ Gurr T.R. 'The Political Origins of State Violence and Terror: A Theoretical Analysis' in Stohl M. and Lopez G.A. (eds.) *Government Violence and Repression: An Agenda for Research*. (Greenwood Press. New York. 1986.). pp45-72. p46.

Harff in her chapter 'Genocide as State Terrorism' examines genocide as a particular form of state terror¹⁸⁹. She goes on to define genocide as: "mass murder, pre-meditated by some power wielding group linked with State power, directed against any target group within the state however defined".¹⁹⁰ But she fails to define state terror further, a fact which excludes its use within the international sphere. Whilst Friedlander in his article 'The Implausible Dream: International Law, State Violence and State Terrorism', concentrates on describing the development of international law, and describes what he terms "state or governmental terrorism" as "any organized form of violent repression directed by governments against their citizens or subjects" but fails to define the meaning of the term "repression"¹⁹¹.

Within Stohl and Lopez's 1988 book: *Terrible Beyond Endurance: The Foreign Policy of State Terrorism*, Asimow and Homer do not produce a definition of terrorism despite the chapter being entitled: 'Democracies and the Role of Acquiescence in International Terrorism'.¹⁹² Interestingly, however, they do mention a Soviet author who claimed that:

"The socio-political terrorism of imperialism has become *state terrorism*, with both the government and the various social institutions under its control pursuing its class objectives....Without any exaggeration one can say that the C.I.A. is the centre of international terrorism. The range of its terrorist activity is exceedingly wide - from the assassination of undesirable individuals, including heads of sovereign state[s] to the forcible overthrow of legitimate governments" ¹⁹³.

¹⁸⁹ Harff B. 'Genocide as State Terrorism' in Stohl M. and Lopez G.A. (eds.) *Government Violence and Repression: An Agenda for Research*. (Greenwood Press. New York. 1986.). pp165-188. p165.

¹⁹⁰ Harff B. 'Genocide as State Terrorism' in Stohl M. and Lopez G.A. (eds.) *Government Violence and Repression: An Agenda for Research*. (Greenwood Press. NY,1986).pp165-188. p165.

¹⁹¹ Friedlander R.A. 'The Implausible Dream: International Law, State Violence and State Terrorism'. in Stohl M. and Lopez G.A. (eds.) *Government Violence and Repression: An Agenda for Research*. (Greenwood Press. New York. 1986.). pp235-268. p247.

¹⁹² Asimow L. and Homer F. 'Democracies and the Role of Acquiescence in International Terrorism' in Stohl. M and Lopez G.A. (eds.). *Terrible Beyond Endurance* (Greenwood Press. Westport, Connecticut. 1988.). pp35-58.

¹⁹³ Pankov Y. *Political Terrorism: An Inditement of Imperialism*. (Progress Publishers. Moscow. 1983.). (no page reference). cited by Asimow L. and Homer F. 'Democracies and the Role of Acquiescence in International Terrorism' in Stohl. M and Lopez G.A.

Neither Väyrynen¹⁹⁴, Weisfelder¹⁹⁵, nor Lewellen produce a definition of terrorism despite including a variant of the term state terrorism within the title of their chapters. Although Lewellen does mention tens of thousands of murders by security forces and paramilitary groups as well as "[t]orture and mutilation routine in killings", and thousands of "disappearances" after arrest by security forces, under the title "State Terror".¹⁹⁶ In his chapter entitled 'U.S. Approaches to Guatemalan State Terrorism. 1977-1986' Bowen claimed that state terrorism is:

"a method of political rule in which a government routinely detains its citizens and without stated charges or promise of trial, tortures rapes, mutilates and murders those it has defined as "undesirable""¹⁹⁷.

This is useful in listing common methods of the state, but unfortunately it fails to explain why this should be considered terrorism. A failure which limits any application of the concept to the actions of the state outside its area of domestic jurisdiction.

Although he does not use the term with the title of his chapter, Peleg is worth noting because he claims that: "[t]he examination of Israel's policy in Lebanon during the Likud era (1977-1984) provides a useful and instructive case study of the exercise of state terrorism"¹⁹⁸. In this sense he is one of the few to assess an element of Israel's counter-terrorist policy. Unfortunately he does not explain why this provides a

(eds.). *Terrible Beyond Endurance* (Greenwood Press. Westport, Connecticut. 1988.). pp35-58. p36.

194 Väyrynen R. 'Domestic Stability, State Terrorism and Regional Intergration in the ASEAN and the GCC' in Stohl. M and Lopez G.A. (eds.). *Terrible Beyond Endurance* (Greenwood Press. Westport, Connecticut. 1988.). pp167-202.

195 Weisfelder R. ' "Peace" from the Barrel of a Gun: Nonaggression Pacts and State Terror in Southern Africa' in Stohl. M and Lopez G.A. *Terrible Beyond Endurance* (Greenwood Press. Westport, Connecticut. 1988.). pp281-312.

196 Lewellen T.C 'The U.S. and State Terrorism in the Third World' in Stohl. M and Lopez G.A. (eds.). *Terrible Beyond Endurance* (Greenwood Press. Westport, Connecticut.1988.). p85-118. p103. Under heading of 'State Terror' in Table 4.2 'Comparison of El Salvador and Nicaraguan Elections'.

197 Bowen G.L. 'U.S. Approaches to Guatemalan State Terrorism. 1977-1986' in Stohl. M and Lopez G.A.(eds.). *Terrible Beyond Endurance* (Greenwood Press. Westport, Connecticut.1988). pp119-166. p119.

198 Peleg I. 'A Different Type of War: Begin and Sharon's Invasion of Lebanon' in Stohl. M and Lopez G.A. *Terrible Beyond Endurance* (Greenwood Press. Westport, Connecticut. 1988.). pp203-225. p203.

useful and instructive case study of the exercise of state terrorism, as he fails to define his term. The only reason this author can deduce from the rest of his chapter is the fact that he describes it as a form of "coercive diplomacy" elsewhere in his chapter¹⁹⁹.

Although the term or any derivative is not mentioned within his title, Hart in his article 'U.S. Interventions in Latin America since World War II' appears to generally accept Stohl's definition noted earlier, but suggests that: "one might quarrel with Stohl's definition of terrorism for being overly broad"²⁰⁰. Here it is also worth mentioning the inclusion within the book of Quester's piece entitled 'Some Explanations for State-Supported Terrorism in the Middle East'²⁰¹. As noted earlier Quester is against the idea of labelling the acts of the State as terror or terrorism on the grounds that terrorism: "is not what a regime perpetuates in the territories it already controls, the territories over which it has a monopoly of the tools of military power and police violence"²⁰².

Another collection of chapters on the topic of state terrorism arose from a conference on the issue held at Michigan State University in November 1988. It was edited by Bushnell, Shlapentokh, Vanderpool and Sundriam and entitled *State Organized Terror*²⁰³. However it suffered from the same problems that faced Stohl and Lopez's books in that many of those who used the term state terrorism (or some derivative) in their title failed to define it. The editors themselves, within their introductory chapter entitled 'State Organized Terror: Tragedy of the Modern State',

199 Peleg I. 'A Different Type of War: Begin and Sharon's Invasion of Lebanon' in Stohl. M and Lopez G.A. *Terrible Beyond Endurance* (Greenwood Press. Westport, Connecticut. 1988.). pp203-225. p222.

200 Hart J.A. 'U.S. Interventions in Latin America since World War II' in Stohl. M and Lopez G.A. *Terrible Beyond Endurance* (Greenwood Press. Westport, Connecticut. 1988) pp59-84. p60. Stohl's definition is that found within Stohl M. 'National Interests and State Terrorism in International affairs'. *Political Science*. Vol. 36(1). July 1984.

201 [My emphasis] Quester G. (eds.). 'Some Explanations for State-Supported Terrorism in the Middle East' in Stohl. M and Lopez G.A. *Terrible Beyond Endurance* (Greenwood Press. Westport, Connecticut. 1988.). pp225-246.

202 Quester G. 'Some Explanations for State-Supported Terrorism in the Middle East' in Stohl. M and Lopez G.A. *Terrible Beyond Endurance*. (Greenwood Press. Westport, Connecticut. 1988.). pp225-246. p227.

203 Bushnell P.T., Shlapentokh V., Vanderpool C.K and Sundriam.J. (eds.) *State Organized Terror* (Westview Press. Oxford. 1992.). p20.

failed to define the term²⁰⁴, as did Brockett²⁰⁵, Pion-Berlin²⁰⁶, Maley²⁰⁷ and Shernock²⁰⁸ within their respective chapters that contained a variant of the term within their title. In contrast Howard did define what he meant by state terror his chapter: 'Repression and State Terror in Kenya 1982-1988', although interestingly he uses Stohl and Lopez's definition: "terrorism is the purposeful act or threat of violence to create fear and/or compliant behaviour in a victim and/or audience of the act or threat"²⁰⁹. In this work Schmid has a chapter specifically addressing the issue entitled 'Repression, State Terrorism and Genocide. Conceptual Clarification'. There he uses the definition which he produced within his revamped version of his major work, this time in conjunction with Jongman in 1988. In that joint work, Schmid (and Jongman) had written that:

"Terrorism is an anxiety-inspiring method of repeated violent action, employed by (semi-) clandestine individual, group, or state actors, for idiosyncratic, criminal, or political reasons, whereby -in contrast to assassination- the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators. Threat -and violence- based communication processes between terrorist (organization), (imperilled) victims, and main targets are used to manipulate the

204 Bushnell P.T., Shlapentokh V., Vanderpool C.K. and Sundriam J. 'State Organized Terror Tragedy of the Modern State' in Bushnell P.T., Shlapentokh V., Vanderpool C.K. and Sundriam.J. (eds.) *State Organized Terror* (Westview Press. Oxford. 1992.). pp3-22.

205 Brockett C.D. 'Sources of State Terrorism in Rural Central America' in Bushnell P.T., Shlapentokh V., Vanderpool C.K. and Sundriam J. (eds.) *State Organized Terror* (Westview Press. Oxford. 1992.). pp59-76.

206 Pion-Berlin 'The Ideological Governance of Perception in the Use of State Terror in Latin America: The Case of Argentina' in Bushnell P.T., Shlapentokh V., Vanderpool C.K. and Sundriam.J. (eds.) *State Organized Terror* (Westview Press. Oxford. 1992.). pp135-152.

207 Maley W. 'Social Dynamics and the Disutility of Terror: Afghanistan, 1978-1989' in Bushnell P.T., Shlapentokh V., Vanderpool C.K. and Sundriam.J. (eds.) *State Organized Terror* (Westview Press. Oxford. 1992.). pp113-134.

208 Shernock S.K. 'The Refractory Aspect of Terror in Movement-Regime' in Bushnell P.T., Shlapentokh V., Vanderpool C.K. and Sundriam.J. (eds.) *State Organized Terror* (Westview Press. Oxford. 1992.). pp169-206.

209 Howard refers to Stohl M. and Lopez G.A. 'Introduction' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport. Connecticut. 1984.). pp3-10. p7-8. Howard R.E. 'Repression and State Terror in Kenya 1982-1988' in Bushnell P.T., Shlapentokh V., Vanderpool C.K. and Sundriam J. (eds.) *State Organized Terror* (Westview Press. Oxford. 1992.). pp77-98. p78.

main target audience(s), turning it into a target of terror, a target of demands, or a target of attention, depending on whether intimidation, coercion, or propaganda is primarily sought"²¹⁰.

Unfortunately this new definition is greatly restricted by his insistence that terrorist actors must be clandestine or at least semi-clandestine, thus excluding the open actions taken by security forces against its own citizens, or those living in other nations.

Many chapters in Barry Rubin's edited book *Terror as a State and a Revolutionary Strategy* were potentially promising not only in terms of providing a definition of state terrorism but also in addressing the State's counter-terrorism as such. Falcoff's 'Between Two Fires: Terrorism and Counter-terrorism in Argentina, 1970-1983'²¹¹ seems especially promising following his apparent link of "counter-terrorism or state repression" on the second page, but he provides neither a definition of state terrorism, nor does he link the two. Indeed he concentrates on the insurgents. Rubin, in his chapter entitled 'The Political Uses of Terrorism in the Middle East'²¹² went no further in producing a definition that allowed for state terrorism than linking what he termed "Systematic terrorism" with actions against "innocent by-standers"²¹³. Despite the title 'War, Terror, Revolution: The Iran-Iraq Conflict', Kostiner also failed to produce such a definition in his chapter which mentioned only state-sponsored terrorism²¹⁴. A process which was repeated by Albin in her chapter entitled 'The Politics of Terrorism:

²¹⁰ Schmid A.P. and Jongman A.J. *Political Terrorism: A new guide to actions, authors, concepts and databases*. (SWIDOC. Amsterdam. 1988.). p28 cited in Schmid A.P. 'Repression, State Terrorism and Genocide: Conceptual Clarifications' in Bushnell P.T., Shlapentokh V., Vanderpool C.K. and Sundriam J. (eds.) *State Organized Terror* (Westview Press. Oxford. 1992.). pp23-40. p30.

²¹¹ Falcoff M. 'Between Two Fires: Terrorism and Counter-terrorism in Argentina, 1970-1983' in Rubin B. (ed.). *The Politics of Terrorism: Terror as a State and Revolutionary Strategy*. (University Press of America. London. 1988.). pp1-26.

²¹² Rubin B. 'The Political Uses of Terrorism in the Middle East' in Rubin B. (ed.). *The Politics of Terrorism: Terror as a State and Revolutionary Strategy*. (University Press of America. London. 1988.). pp27-67.

²¹³ Rubin B. 'The Political Uses of Terrorism in the Middle East' in Rubin B. (ed.). *The Politics of Terrorism: Terror as a State and Revolutionary Strategy*. (University Press of America. London. 1988.). pp27-67. p29.

²¹⁴ Kostiner J. 'War, Terror, Revolution: The Iran-Iraq Conflict' in Rubin B. (ed.). *The Politics of Terrorism: Terror as a State and Revolutionary Strategy*. (University Press of America. London. 1988.). pp95-128.

A Contemporary Survey'²¹⁵. However in his chapter Howe defined terrorism as "the deliberate use of physical violence against non-combatants for political end" and stated that both states and sub-national groups can practice terrorism²¹⁶.

Another book worth noting is O' Kane's *The Revolutionary Reign of Terror* ²¹⁷. Unfortunately she concentrates on what she describes as "revolutionary reigns of terror"²¹⁸ which "occur within the revolutionary upheaval"²¹⁹. Yet as O'Kane herself acknowledges, "the revolutionary crisis itself prevents total state control and invites lawlessness", allowing one to suggest that those embarking upon what she describes as a "reign of terror" do not constitute the State at that time. Whilst she notes the definitions produced by various authors on the topic including Wardlaw, Walter, Thorton and Wilkinson²²⁰, she does not really define state terrorism, although she does note that terrors are identified by the introduction of the laws on counter-revolution²²¹ (however she does not say what makes them terroristic in nature). She also noted earlier that in all "terroristic states" some arbitrariness must remain²²², and that the chances of the innocent falling victim to the terror were multiplied yet higher in the revolutionary regime than a terroristic or repressive regime²²³.

The book *Fear at the Edge: State Terror and Resistance in Latin America* edited by Corradi, Weiss-Fagen and Garreton²²⁴ provided a promising title, but its content in terms of the concept of state terrorism was very

²¹⁵ Albin C. 'The Politics of Terrorism: A Contemporary Survey' in Rubin B. (ed.). *The Politics of Terrorism: Terror as a State and Revolutionary Strategy*. (University Press of America. London. 1988.). pp183-234.

²¹⁶ Howe H.M. 'Government and Opposition Terrorism in South Africa' in Rubin B. (ed.). *The Politics of Terrorism: Terror as a State and Revolutionary Strategy*. (University Press of America. London. 1988.). pp153-182. p153.

²¹⁷ O' Kane R.T.H. *The Revolutionary Reign of Terror*. (Elgar. Aldershot. 1991.).

²¹⁸ O' Kane R.T.H. *The Revolutionary Reign of Terror*. (Elgar. Aldershot. 1991.). p13.

²¹⁹ O' Kane R.T.H. *The Revolutionary Reign of Terror*. (Elgar. Aldershot. 1991.). p20.

²²⁰ O' Kane R.T.H. *The Revolutionary Reign of Terror*. (Elgar. Aldershot. 1991.). p16-17.

²²¹ O' Kane R.T.H. *The Revolutionary Reign of Terror*. (Elgar. Aldershot. 1991.). p25.

²²² O' Kane R.T.H. *The Revolutionary Reign of Terror*. (Elgar. Aldershot. 1991.). p19.

²²³ O' Kane R.T.H. *The Revolutionary Reign of Terror*. (Elgar. Aldershot. 1991.). p19.

²²⁴ Corradi J.E., Weiss-Fagen P. and Garreton M.A. (eds.). *Fear at the Edge: State Terror and Resistance in Latin America*. (University of California Press. Berkeley. 1992.).

disappointing and instead it concentrated on how people deal with fear. In fact of the 14 chapters (excluding the introduction) by different authors, only one mentioned any variation on the term state terrorism and that was Rial's 'Makers and Guardians of fear: Controlled Terror in Uruguay'. Unfortunately he does not produce a definition of the term, although he does note torture in prison²²⁵. Likewise while the index of the book gives 18 references under the title: "Terror, state", not one contains a definition. Instead the book concentrates on the way people resisted 'repressive' acts of the state in Latin America.

Whilst *Western State Terrorism* edited by Alexander George is a welcome change to the vast majority of general books on terrorism, which focus almost exclusively on sub-state terrorism supported by non-Western regimes, the various chapters are rather disappointing in regards to the concept of state terrorism. Unlike the books edited by Stohl and Lopez's, there are no chapters specifically dealing with the concept of state terrorism, and although there is opportunity for the authors to produce a definition within their chapter, few do. Herman and O'Sullivan for example in their chapter: 'Terrorism as Ideology and Cultural Industry' provide a table which suggests that the number of terrorist acts carried out by non-state actors are dwarfed by those carried out by states. Unfortunately however the table is not based on any single precise definition, instead it is merely a collation of data based on similar incidents²²⁶. Similarly Chomsky's chapter entitled 'International Terrorism: Image and Reality' does touch on the issue of defining terrorism but he merely (although usefully) takes the definitions given by Western governments and scholars on the issue and applies them to the actions of Western governments²²⁷. Interestingly, he does however suggest that acts of terrorism would include Israel's Iron Fist operations in Lebanon, and Israel's counter-

²²⁵ Rial J. 'Makers and Guardians of fear: Controlled Terror in Uruguay' in Corradi J.E. , Weiss-Fagen P. and Garreton M.A. (eds.). *Fear at the Edge: State Terror and Resistance in Latin America*. (University of California Press. Berkeley. 1992.). pp90-103.

²²⁶ Herman E.S. and O'Sullivan G. ' 'Terrorism' as Ideology and .Cultural Industry' in George A.(ed.) *Western State Terrorism*. (Polity Press. Oxford. 1991.). pp39-75. p.41-42. Table A.

²²⁷ Chomsky N. International Terrorism: Image and Reality' in George A.(ed.) *Western State Terrorism*. (Polity Press. Oxford. 1991.). pp12-38.

terrorist bombing of Tunis²²⁸, as well as genocide against a defenceless civilian population²²⁹.

McClintock does a similar thing within his chapter 'American Doctrine and Counterinsurgent State Terror'. Instead of producing his own definition of 'state terror' he relies upon the U.S. armed forces' use of the term 'terror' within their own documents on unconventional and low intensity warfare. He then describes the development and use of such self-styled terror tactics by the U.S. armed forces within Indochina and Central America²³⁰. It is not surprising that Rolston does not define the term for there is no use of the term or any derivative within the title of his chapter 'Containment and its Failure: The British State and the Control of Conflict in Northern Ireland'. However, within his description of the development of the terrorist conflict in Northern Ireland, he does usefully note that:

"When the question of 'state terrorism' is broached at all it is usually in relation to the state's proxy instrument in "terror". Rarely is the role of the state in creating, perpetuating "terrorism" examined thoroughly, especially in the case of Ireland. This is a grave oversight"²³¹

Likewise whilst Budiardjo does not make reference to the term 'terrorism' within the title of her article 'Indonesia: Mass Extermination and the Consolidation of Authoritarian Power', she does note that Indonesia committed numerous acts of terrorism against its own people and against the people of W. Papau and E. Timor. These include the slaughter of hundreds of thousands of people, the massacres of villages, clubbing to death of 800 suspected communist suspects²³². Falk also fails to define the term despite including a variant of it within the title of his

²²⁸ Chomsky N. 'International Terrorism: Image and Reality' in George A.(ed.) *Western State Terrorism*. (Polity Press. Oxford. 1991.). pp12-38. p26-27.

²²⁹ Chomsky N. 'International Terrorism: Image and Reality' in George A.(ed.) *Western State Terrorism*. (Polity Press. Oxford. 1991.). pp12-38. p20.

²³⁰ McClintock M. 'American Doctrine and Counterinsurgent State Terror' in George A.(ed.) *Western State Terrorism*. (Polity Press. Oxford. 1991.). pp121-154.

²³¹ Rolston B. 'Containment and its Failure: The British State and the Control of Conflict in Northern Ireland' in George A.(ed.) *Western State Terrorism*. (Polity Press. Oxford. 1991.). pp155-179. p167.

²³² Budiardjo C. in her 'Indonesia: Mass Extermination and the Consolidation of Authoritarian Power' in George A.(ed.) *Western State Terrorism*. (Polity Press. Oxford. 1991.). pp180-211. p180.

chapter: 'The Terrorist Foundations of Recent US Foreign Policy'. He does however suggest that "unless terrorism is conceptualized in a manner broad enough to emphasise the role of the State and the nature of total war in the nuclear age", the issue of responsibility and response will be misrepresented by being restricted to the tactics of the dispossessed²³³. Therefore, in addition to suggesting that deploying nuclear weapons, drafting war plans to destroy on a massive scale the civilian society of the Eastern bloc "was terroristic in essence", he also suggests that "the dispossession of people from their land almost always is a product of terrorist forms of belligerency"²³⁴.

Another interesting book on the topic, which is disappointing on the definition of state terrorism is Perdue's *Terrorism and the State: A Critique of Domination Through Fear*. The book is interesting in terms of its political economy approach²³⁵ which purports to take the analysis of state terrorism to a level even higher than other critical authors such as Chomsky and Herman. According to Perdue a political economy approach must place the behaviour of the state "in a world system context"²³⁶. As such, it involves "a critique of the rational-legal authority" and "transcends questions of law and legalism to consider the domination of weaker states by the stronger"²³⁷. For Perdue terms like 'unlawful', 'rational', and 'official' offer legitimation for a system of rule and: "[s]uch symbolism has the clear potential to disguise patterns of intimidation and intervention, designed to keep the world safe from change". For Perdue this: "may distort ongoing struggle between conflicting strata, positioned in a hierarchical international order of production, transfer, and concentration"²³⁸. The result of all this is that:

²³³ Falk R. 'The Terrorist Foundations of Recent U.S. Foreign Policy' in George A.(ed.) *Western State Terrorism*. (Polity Press. Oxford. 1991.). pp102-120. p109.

²³⁴ Falk R. 'The Terrorist Foundations of Recent U.S. Foreign Policy' in George A.(ed.) *Western State Terrorism*. (Polity Press. Oxford. 1991.). pp102-120. p110-1. He gave the example of native Indians of America.

²³⁵ Perdue W. *Terrorism and the State: A Critique of Domination Through Fear* (Praeger New York. 1989.). p16.

²³⁶ Perdue W. *Terrorism and the State: A Critique of Domination Through Fear* (Praeger New York. 1989.). p16.

²³⁷ Perdue W. *Terrorism and the State: A Critique of Domination Through Fear* (Praeger New York. 1989.). p16.

²³⁸ Perdue W. *Terrorism and the State: A Critique of Domination Through Fear* (Praeger New York. 1989.). p18.

"An analysis of state terrorism must be carried out at different levels. At the national level, the state may become an instrument designed to control through fear its subject population. *Regime* terror involves the systematic use of torture and the rise of military and police forces engaged in an internal war against a subject population. This form of state terrorism may also be waged through shadowy organisations, death squads, and the like that have no official power but that are clearly linked with the national elite. However, to focus on regime terror is often deceptive. To cast the issue of terrorism as the abuse of state power by political deviants may be to ignore the more endemic, taken-for-granted, higher forms of sanctioned violence that avoid the terrorist label. It may also ignore state structural imperatives (expressed in policy and action, including the threat or use of force) designed to preserve a transnational market system"²³⁹.

Therefore at the international level the higher terrorism takes different forms and may include war between states. Thus Perdue suggests that: "[p]erhaps the conduct of warfare can represent only shades of dishonour. Perhaps the issue of war crimes is superseded by that of the crime of war"²⁴⁰. As a result of such a structural perspective the nearest Perdue comes to producing a definition is to produce a long list of acts which he does not like. For him state terrorism is evidenced:

"1. in police state practices against its own people to dominate through fear by surveillance disruption of group meetings, control of the news media beatings, torture, false and mass arrests, false charges and rumours, show trials, killings, summary executions and capital punishment;

2. in the armed attack by the military forces of a state on targets that put at risk the civilian population residing in another state;

3. in assassination attempts and plots directed by a state toward the officials of other states, whether carried out by military strike, special forces units or covert operations by "intelligence forces" or their third party agents;

4. in the military occupation of a state, whether in the form of direct martial control or in the establishment of a base of operations;

²³⁹ Perdue W. *Terrorism and the State: A Critique of Domination Through Fear* (Praeger New York. 1989.). p18.

²⁴⁰ Perdue W. *Terrorism and the State: A Critique of Domination Through Fear* (Praeger New York. 1989.). p19.

5. in covert operations by the "intelligence" or other forces of a state that are intended to destabilize or subvert another state;
6. in disinformation campaigns by a state, whether intended to destabilize another state, or to build public support for economic, political, or military force or intimidation directed at another state;
7. in military exercises, manoeuvres, or "games" conducted by a state outside the territory or territorial waters of that state;
8. in the creation and support of armed mercenary forces by a state for the purpose of subverting the government of another state;
9. in the support, by whatever means, of other states that deny the right of self-determination to nationally conscious populations expressed through popularly supported liberation movements;
10. in arms sales that support the continuation of regional wars and retard the search for political solutions;
11. in the introduction or transportation of nuclear weapons by a state into or through the territory, territorial waters, or air space of other states, or into international waters or airspace;
12. and in the development, testing, and deployment of nuclear and space weapons systems, and all other weapons of mass destruction, by the state that in all circumstances increase the probability of genocide and ecocide, while condemning the poor to continued misery and all humanity to a state of perennial fear"²⁴¹.

²⁴¹ Perdue W. *Terrorism and the State: A Critique of Domination Through Fear* (Praeger New York. 1989.). p42-3. Perdue writes that, "[p]oints 2,3,5-8, and 10-12 were prepared by the author, and adopted with modifications as part of a conference declaratons on the question of terrorism. Others were developed expressly for this volume. (The first point is the work of Ramsey Clark.) The conference was organized by the International Progress Organization of Vienna, a U.N.E.S.C.O. non-governmental organization." Perdue W. *Terrorism and the State: A Critique of Domination Through Fear* (Praeger New York. 1989.). p43.

Finally it is worth noting Gilbert's *Terrorism, Security and Nationality: An Introductory Study in Applied Political Philosophy* ²⁴², for this philosopher devotes a whole chapter entitled 'Terrorism and The State' to the notion. However whilst he makes many interesting points, many of which are cited or even used by this author later on, Gilbert does not define exactly what he means by state terrorism. Instead he answers his own question "What is state terrorism" by saying that:

"On the one hand it has many of the features of war; what is particularly distinctive of state terrorism is its use of political assassination, of torture and of other cruelties against opponents. Such acts are indisputably contrary to the rules of war"²⁴³.

Yet he goes on to note that what makes the 'taking out' of terrorists without due process of law 'state terrorism' is that it violates the rules of civil life: "State terrorism too is characteristically criminal....it is contrary to the laws enforced by the state"²⁴⁴. Interestingly he also notes that states may legislate their violent acts of acts of oppression against opponents "by passing laws that permit summary executions, torture or detention without trial"²⁴⁵. The qualification according to Gilbert is not a radical one:

"Terrorism which is legalised by the State involves making exceptions to laws which protect citizens in times of peace from being killed, wounded or imprisoned without the application of recognised legal processes. Acts of legalised terrorism thus constitute a grave infringement of human rights. In such cases it may be argued that, although legislation has been carried through which is technically in order, the fact that it breaches human rights invalidates it under international law - *lex invista non est lex*' "²⁴⁶.

²⁴² Gilbert P. *Terrorism, Security and Nationality: An Introductory Study in Applied Political Philosophy*. (Routledge. London. 1994.).

²⁴³ Gilbert P. *Terrorism, Security and Nationality: An Introductory Study in Applied Political Philosophy*. (Routledge. London. 1994.). p128.

²⁴⁴ Gilbert P. *Terrorism, Security and Nationality: An Introductory Study in Applied Political Philosophy*. (Routledge. London. 1994.). p131.

²⁴⁵ Gilbert P. *Terrorism, Security and Nationality: An Introductory Study in Applied Political Philosophy*. (Routledge. London. 1994.). p133.

²⁴⁶ Gilbert P. *Terrorism, Security and Nationality: An Introductory Study in Applied Political Philosophy*. (Routledge. London. 1994.). p133.

Moreover it is difficult to accept that all of the breaches of international legislation or even all human rights legislation constitutes state terrorism. Indeed in response to this author's questionnaire only 9% (or 11) of the 120 respondents indicated that "Violations of international law" constituted state terrorism²⁴⁷.

This selective literature has shown why many of the existing definitions of state terrorism are inadequate in that they fail to label all the areas of a state's activities that need to be covered. It also raises many points in relation to the issue of state terrorism, many of which provide context to understanding the aims of the thesis and its development. It is therefore to the research design and aims that the thesis now turns, before examining a section on its content .

²⁴⁷ In reply to part of question 7. In contrast 34% (40) of the 120 respondents indicated that "human Rights violatons" constituted state terrorism, although here the terms human rights legislation was not used.

Research Design: The Aims

The aim of this thesis is to investigate the concept of state terrorism. First it proposes to examine the notion of state terrorism from which a working definition of the concept will be produced. Then it aims to apply this, along with any other notable definitions of the term, to particular activities of a specific state in order to identify any problems pertaining to each definition. The 'results' of such an analysis will be reviewed in a concluding chapter, in which any necessary revisions to the original working definitions will be made.

Such a plan asks various questions above and beyond those of 'Why study state terrorism?' and 'Why is the primary aim of this study to define the concept of state terrorism?', both of which can be seen to have been both asked and answered within the previous part of this introductory chapter. The first and most obvious of these questions is 'What are the "particular activities of a specific state" to which the definitions of state terrorism will be applied?'. The answer to which is the 'counter-terrorist' activities of Israel. This in turn leads to various questions, including 'What are these counter terrorist activities?', and 'Why apply the definitions to these counter-terrorist activities of Israel?'.

A detailed answer to the first of these two questions can be found within the later section on Israeli counter-terrorism. Whilst the decision to apply the various definition of state terrorism to the actions of a contemporary Western democracy which pride themselves on the 'rule of law' can be seen to have been primarily designed to fill another apparent 'gap' in the literature on terrorism. As already noted, the reading undertaken prior to the commencement of the Ph.D. had given the distinct impression that great number, if not the vast majority, of 'terrorologists' could not conceive of terrorism being undertaken by Western democratic states, especially any carried out within their areas of jurisdiction, in that few authors used examples from contemporary 'Western' states. Bell for example wrote that although state terror has long been with us, it has been only a relatively rare option for

democratic governments²⁴⁸. Whilst other authors went as far as claiming that 'terrorism' was the antithesis of the 'rule of law'²⁴⁹, if not 'Western' values²⁵⁰. Indeed many appeared to write merely to prove that insurgent terrorists were inspired or trained by the ideologues of either the Soviet Union and its allies, or Muslim (or 'Mad') Middle Eastern states²⁵¹.

Stohl can be seen to support this initial 'hypothesis' when he wrote that the singular exception proposed by most liberal Western authors to the myth that terrorism is perpetrated solely by non-state actors is the recognition that non-democratic, totalitarian, fascist or communist states practise terrorism²⁵². A view which seems to be supported by a content analysis of the relevant references within the sub-section of Schmid and Jongman's bibliography found in their book *Political Terrorism: A new guide to actions, authors, concepts and databases*. It reveals that not one of the 196 English language references within the section entitled 'Regime Terrorism and Repression' specifically mentioned Israel²⁵³.

²⁴⁸ Bell J.B. *A Time of Terror: How Democratic Societies Respond to Revolutionary Violence* (Basic Books. New York. 1978). p3.

²⁴⁹ In full the sentence reads, "It [terrorism] is also a moral crime, a crime against humanity, an attack not only on our security, our rule of law, and the safety of the state, but on civilised society as well". Wilkinson P. *Terrorism and the Liberal State*. (2nd ed. Macmillan. London. 1986.). p66

²⁵⁰ Netanyahu wrote, "spiritually [the West's] values are the direct antithesis of those of terrorism" Netanyahu B. (ed.). *Terrorism: How The West Can Win*. (Farrar Strauss and Giroux. New York. 1986.). p5.

²⁵¹ For example Netanyahu B. (ed.). *Terrorism: How The West Can Win*. (Farrar Strauss and Giroux. New York. 1986.). Cline C.S. and Alexander Y.(eds.). *Terrorism and the Soviet Connection*. (Crane Russak. New York.1984), Sterling C. *The Terror Network: The Secret War of International Terrorism* (Holt, Rinehart and Winston. 1981.). Possony S.T. and Bouchey L.F. *International Terrorism: The Communist Connection*. (Washington, D.C. American Council for World Freedom. 1978) The latter two were cited by Sederberg P. *Terrorist Myths: Illusion, Rhetoric and Reality*. (University of Southern California. Prentice Hall, New Jersey. 1989.).

²⁵² Stohl M. 'Demystifying Terrorism , The Myths and Realities of Contemporary Political Terrorism' in Stohl M. (ed.) *The Politics of Terrorism*. (3rd ed. Marcel Dekker. New York. 1988). pp1-30. p8.

²⁵³ See Schmid A.P. and Jongman A.J. *Political Terrorism: A new guide to actions, authors, concepts and databases*. (SWIDOC. Amsterdam. 1988.). pp259-269. Only one mentioned the United Kingdom (or part of it) and it was entitled *A society on the run: A psychology of Northern Ireland*. Interestingly Schmid and Jongman note that "*This book [Field R.M. A society on the run: A psychology of Northern Ireland.] was censored, then withdrawn from the British market and 10,000 copies were shredded*". Schmid A.P. and Jongman A.J. *Political Terrorism: A new guide to actions, authors, concepts and databases*. (SWIDOC. Amsterdam. 1988.). p262.

However the decision to concentrate on a contemporary western state does not mean that the classical 'reigns of terror' such as revolutionary France, the Soviet Union and Nazi Germany have been totally ignored, for aspects of them are used to aid the conceptual thinking, or to illustrate, particular points.

Secondly the decision to concentrate solely upon counter-terrorist actions to provide possible examples of state terrorism is also in the hope of addressing a gap in the literature. A content analysis of Schmid's bibliographical chapter on the topic of 'Regime terrorism and Repression' reveals that the term 'counter-terrorism' or 'counter-terror' was mentioned only once within either the title of the reference or the brief resume by the editors of the bibliography, and that was a conference paper entitled 'Terror and counter-terror in Nazi Occupied Poland'²⁵⁴. The choice of Western counter-terrorism meant that this area provided a novel subject for an examination of state terrorism, one that potentially contained a number of problems. Perhaps the most obvious problem being the emotional one noted earlier by Duvall and Stohl of getting people to accept that the State can be terrorist, especially a Western state, a problem which can be seen to be made even stronger by the claim that people will accept the 'draconian laws', abuses of 'civil' or 'human' rights, if they believe it will solve a problem²⁵⁵, especially when the problem is as well publicised and

²⁵⁴ Schmid A.P. and Jongman A.J. *Political Terrorism: A new guide to actions, authors, concepts and databases*. (SWIDOC. Amsterdam. 1988.). p264. Interestingly many of the alleged examples of state terrorism were justified in order to counter terrorism including some of Stalin's show trials, Hitler's reprisals and the repression of various Latin American governments in the late 1970s and early 1980s.

²⁵⁵ According to Green, "the world, especially the public at large, is not excessively interested in governmental terrorism, which tends to be accepted as unavoidable and is often viewed as inevitable if a government is to retain its authority against threats emanating from woolly-headed or vicious revolutionaries". Green L.C. 'The Legalization of Terrorism' in Alexander Y., Carlton D., and Wilkinson P. (eds.). *Terrorism: Theory and Practice* (Westview Press. Boulder, Colorado. 1979.). p176 cited by Sederberg P. *Terrorist Myths: Illusion, Rhetoric and Reality*. (University of Southern California. Prentice Hall, New Jersey. 1989.). p47. Similarly Bushnell *et al* asserted that within internal conflict situations, "[t]he general population remains unable to distinguish the war against society from the war against society's enemies and is ready to accede to violent political upheavals and terror as legitimate attempts by the leaders of the state to return state and society 'to the right path'". Bushnell P.T., Shlapentokh V., Vanderpool C.K. and Sundriam J. 'State Organized Terror Tragedy of the Modern State' in Bushnell P.T., Shlapentokh V., Vanderpool C.K. and Sundriam J. (eds.) *State Organized Terror* (Westview Press. Oxford. 1992) pp3-22. p12. For an explanation for

potentially dangerous as, the terrorism of those who challenge the Western state.

Here it should be noted that when the author initially started the Ph.D. on a part-time, self-financed basis at The University of Reading, the aim was merely to illustrate each of the various possible types of state terrorism that this author's 1991 definition had conceptualised, using examples which included some taken from the foreign and domestic policies of the USA and her allies as well as from the 'classic' 'terrorist regimes'. Following discussions with an external examiner from the University of Surrey and with my supervisor at Reading, it was decided to change the title of the Ph.D. to include the term counter-terrorism²⁵⁶. The intent then became one of examining both the state terrorism and counter-terrorism of the UK and USA only. These original aims changed somewhat following the transfer of the doctorate to the University of Newcastle-Upon-Tyne.

First, it was decided to examine a single part of particular states' foreign and domestic policies, that is their 'counter-terrorist' policies. Second, it was decided to rigorously 'apply' this author's definition to this generally unknown quantity, rather than to merely 'illustrate' it along with various other credible definitions in order to highlight the advantages and disadvantages of each, and the parts thereof. The application of the various definitions to 'ring-fenced' phenomena of which the author was fairly ignorant was considered a valid means of 'testing' the definitions, and a far more intellectually rigorous one than the previous method. Therefore, instead of merely allowing the author merely to pick and chose examples that lay cosily with his definition, it and the other definitions were exposed to potentially challenging examples.

The third change was the decision to examine the counter-terrorist actions of just Israel rather than the U.K. and U.S.A.. This decision came about in stages. Initially, Israel replaced the U.S.A. for like the latter, Israel constituted a Western power which suffered from large scale

this, see the sociological explanation (reification) for the neglect of State terrorism later.

²⁵⁶ Primarily in order to increase the chance of gaining funding from the state itself (via the E.S.R.C.).

'terrorism', and carried out 'counter-terrorist' policies. More importantly however Israel appeared to provide a far better comparison with Britain now that the definitions were to be applied solely to 'counter-terrorist' activities. Israel's well documented use of force abroad in order to counter what it termed 'terrorism' appeared to surpass in variety, if not in intensity, anything that the U.S.A. had undertaken in the name of counter-terrorism. In terms of the particularly controversial area of 'direct domestic state terrorism' there were a number of factors that made Israel far more worthy of a comparison with the UK than the U.S.A. The most obvious was the fact that the domestic 'terrorist' threat faced by the U.S.A. was not only far smaller in absolute and relative terms but was of an entirely different ilk to that relatively large-scale 'terrorism' which both the UK and Israel faced from nationalist groups. In addition, the constitutional and legal systems of the two countries were similar, both possessed a partly written constitution and Israel had 'inherited' various legal customs and laws from the UK which had previously ruled the land, then called Palestine. Finally the fact that at the time of the decision both Israel and the U.K. were involved in on-going conflicts also encouraged the use of these two nation states, for this meant that the accusations of terrorism, 'counter-terrorism and state terrorism were politically important and therefore even more controversial. Many of their counter-terrorist policies were (and still are) considered to constitute state terrorism by the victims and/or the enemies of the perpetrating states²⁵⁷, even if

²⁵⁷ See for example Berry's assertion that, "[f]or more than three million Irish men and women living in Britain the introduction of the PTA was the introduction of legalised terror." by Berry S. *The Prevention of Terrorism Act: Legalised Terror*. (Socialist Workers Party Pamphlet.). p3. According to Bonner other accusations of State terrorism are to be found in Kelley K.J. *The Longest War: Northern Ireland and the IRA* (London. Zed. 1988.). pp189-92, 248-9, 275. and McLee A. *Terrorism in Northern Ireland* (N.Y. General Hall, 1983) Bonner D. 'United Kingdom: The United Kingdom Response to Terrorism.' in Schmid A.P. and Crelinsten R.C. (ed.). *Western Responses to Terrorism*. (Frank Cass. London. 1993.). pp171-205. p172. As for Israel, the PLO have claimed that "The illegal acts of terror that have been perpetrated by Israel and condemned by the world community for over 25 years include the following: arbitrary arrest and detention; ill-treatment and torture of prisoners; destruction and demolition of villages, town quarters, and houses; confiscation and expropriation of property; arbitrary evacuation and transfer of sections of population; mass and indiscriminate killings; and unwarranted terroristic attacks on refugee camps". Palestine Liberation Organisation. (Department of Information and National Guidance). *Crime and No Punishment*. (PLO. Beirut. 1974.). p5. See also Hadaw S. *The Palestinian: Victim of Conspiracy*. (Arab Palestine Association. Toronto. 1981.). p46-47. Free Palestine. 'Who are the Terrorists?'. *The Zionists Record*. Part 7 in Free Palestine. *Palestine Information Kit*. London. August 28. 1975.

few, if any, of the many 'terrorologists' of these countries perceive them in this way. However since the production of the detail on both the counter-terrorist activities of U.K. and Israel at home abroad, (the latter of which were almost exclusively Israeli), it was decided to omit the section on the U.K. because it added little in return for the inclusion of tens of thousands of extra words, whilst pushing the thesis well beyond the original target in terms of the number of words.

By examining the issue of state terrorism the thesis aims to raise, if not answer several important questions and issues surrounding the concept of state terrorism. In addition to illustrating the problems facing the *production* of any definition of the word 'terrorism', such an examination will hopefully illustrate the problems of *applying* any definition of terrorism. Finally the thesis aims to further the cause of knowledge by accurately describing the legalities of various aspects of each countries counter-terrorist policies since the day troops were sent into the West Bank in the late 1960s.

Research Design: The Content.

I will now note three points in relation to the content and methodology. The first is the inclusion of the results of a questionnaire on the topic designed and sent to various academics because the author's reading of the literature on the topic of 'terrorism' continued to be producing so little of value to the debate on definitions even after the transfer of his Ph.D. at Newcastle. Many of the results of this are scattered throughout the conceptual parts of the thesis including this introductory chapter, and all the quantifiable results and the sampling technique are described in Appendix A.

The second and perhaps most important of these final three points is that the methodology of the thesis relied heavily upon computer databases, not only to find literature on the topic, but also to produce the sample group of academics to who the questionnaire was sent²⁵⁸. It was to temper any criticisms of 'ethnocentrism' which could result from the

²⁵⁸ The overall sample can be seen to be made up of four unequal sources, three of which involved the use of the databases supplied by the Bath Information and Data Services (BIDS). See Appendix A for details.

view that such databases reflect the economic strength of the larger mainstream Western publishers *vis-a-vis* those of the 'third world' and 'alternative' press²⁵⁹, that this author therefore made a conscious effort to search the latter and to follow any potentially-relevant material cited by individual authors.

The third, relatively minor problem (which is also related to this latter point) is the lack of consensus in the use of terminology.

The Issue of Terminology.

Unfortunately as already noted within the opening chapter the question of terminology is not as clear cut as those wishing to study the issue might hope, for many of those who argue that the State can indeed be 'terrorist' also use the term 'state terror' to describe such actions²⁶⁰. Even within the confines of this introductory chapter the many authors cited have used a wide variety of labels to describe the phenomenon. Many of which revolve around the use of the word 'terror' or 'terrorism'. This is of no real surprise in that these were the main terms used in the computer driven literature search which formed the basis of the literature used within the conceptual part of the thesis.

²⁵⁹ After comparing the results of a database on terrorism with a hand compiled list Dr. E. Reid Professor of Information Science at Rutgers University concluded that "[o]nline databases can give the researcher a distorted view of a subject like *terrorism*". The databases she examined contained only 46% of the 1,165 works on her handcompiled list. She goes on to say "[m]any times, it is almost impossible to find comprehensive coverage of non-U.S. materials in either on-line or print reference sources". Her explanation for this was that "[e]ach electronic database has an unintentional bias because of its editorial policy. What one database defines as terrorism might not be a patriotic act in another country" and "[i]f the U.S. media says an event is important, that event becomes raw material for terrorism incident databases" See a summary of her work and interview by Arnold S.E. 'Researching Terrorism'. *Information Today*. Vol. 9(7). July-Aug. 1992. pp13-14.p13-14. Even for those who are skeptical of such economic interpretation of databases, one merely has to note the words of Schmid who when writing about the literature on terrorism wrote, "the Anglo-American output dwarfs all others" Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature*. (Amsterdam, North Holland. 1984.). p1.

²⁶⁰ For example Corrado R.R. and Tompkins E. 'A Comparative Model of the Psychological Effects of the Victims of State and Anti-State Terrorism'. *International Journal of Law and Psychiatry*. Vol. 12(4). 1989. pp281-293. p281, 291; and Gurr T.R. 'The Political Origins of State Violence and Terror: A Theoretical Analysis' in Stohl M. and Lopez G.A. (eds.) *Government Violence and Repression: An Agenda for Research*. (Greenwood Press. NY.1986.). pp45-72. p46, 48.

However it may mean that various works on state terrorism that go by the name of repression, oppression or human rights abuses (all of which have been used interchangeably with the 'terror-centric' terms by some authors²⁶¹) may have been excluded from this authors search.

This variety of labels creates a number of other problems. The first of these is the fact that some authors also use terms such as state terrorism interchangeably with these other concepts means that the situation can often appear very confusing. The second, and far more important problem relating to terminology is that some authors believe that 'state terror' and 'terrorism' are separate subjects and should not be studied together, whilst many of those who assert that 'the State' *can* be 'terrorist' also use the term 'state terror'²⁶² to describe such actions²⁶³. Indeed this author's questionnaire attempted to address the questionnaire. In response to the question 'Can acts, carried out directly by the agents of those in power, ever be labelled acts of 'terror' or

²⁶¹ See for example Dimitrijevic A. as interpreted by P.B. Maggs review of his book 'Tyrannies: Studies in Human Rights and State Terror'. *American Journal of International Law*. Vol. 81 (3). 1987p399.; Bushnell P.T., Shlapentokh V., Vanderpool C.K. and Sundriam J. 'State Organized Terror Tragedy of the Modern State' in Bushnell P.T., Shlapentokh V., Vanderpool C.K and Sundriam J. (eds.) *State Organized Terror* (Westview Press. Oxford. 1992) pp3-22; Gerner D.J. 'Weapons for Repression ?. U.S. Arms Transfers to the Third World' in in Stohl M and Lopez G.A. *Terrible Beyond Endurance* (Greenwood Press. Westport, Connecticut.1988.). pp247-280. Various authors appear to accept Stohl and Lopez's that, "[o]ppression , repression and terrorism may be concurrent and coordinated policies and actions" but forget their assertion that "they are nonetheless different phenomena and should be distinguished".Stohl M. and Lopez G.A. 'Introduction' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Conneticut. 1984.). pp3-10. p8. Perhaps it is Stohl and Lopez's own use of book titles such as "The State As Terrorist: The Dynamics of Global Violence and Repression" and Testing Theories of State Violence, State Terror and Repression" and a diagram of three concentric circles that gives the impression that terrorism is merely a subset of repression which is in turn a subset of oppression.

²⁶² Schmid notes that, "[i]n the literature on terrorism there is no consensus as to what the relationship between terror and terrorism is", he also notes that "one author held that the terms could be used as synonomous and therefore interchangeably (Blok)" and that "[a] number of authors (Hess, Merari, Ochberg, Wilber) stress that terror is a state of mind while terrorism would refer to organized social activity" whilst "[a] number of authors reserve the word terror for state -induced violence and use terrorism for insurgent violence (e.g. Francis, Wilkinson, Zofka)". Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland. Amsterdam. 1984.). p64.

²⁶³ For example Corrado R.R. and Tompkins E. 'A Comparative Model of the Psychological Effects of the Victims of State and Anti-State Terrorism'. *International Journal of Law and Psychiatry*. Vol. 12(4). 1989. pp281-293. p281, 291. And Gurr T.R. 'The Political Origins of State Violence and Terror: A Theoretical Analysis' in Stohl M. and Lopez G.A. (eds.) *Government Violence and Repression: An Agenda for Research*. (Greenwood Press. NY.1986.). pp45-72. p46, 48.

'terrorism'?, only 3% of those 118 respondents answered with an outright 'No', with an overwhelming 86% replying 'Yes, either as acts of 'terror' or 'terrorism'²⁶⁴. In contrast to the tendency within the literature observed by Wilkinson, only 7% replied 'Yes' but only as acts of 'terror'. Interestingly this latter figure was only one percent more than the percentage of respondents who answered 'Yes but only as acts of terrorism'²⁶⁵. Yet in answer to the question 'What words would you use to label acts of direct 'terror/ism'? (excluding support/sponsorship of insurgents) e.g. 'state terror', 'regime terrorism', 'terror from above', 'governmental terrorism', 'repression' etc.?' more than 60 answers were received, of which this author would describe 26 as credible 'labels'²⁶⁶. The most popular was that of 'state terror'²⁶⁷ chosen by 49 authors, a fact that could at first glance be seen to give weight to those that believe it is not profitable to collapse these two distinct phenomena into a single category. Yet this finding must be tempered by the fact that the question was 'biased' in favour of use of the term, in that 'state terror' was cited as an example of a label that one might use along with four others. The reasoning being that some respondents to the pilot questionnaire had not understood the meaning of the word 'label' when the question had not included examples of such labels. Support for the claim that the inclusion of the examples may have influenced the outcome is that a number of authors answered the question by either referring to "all of the above" or simply underlining some or all of the

264 Eight ticked the box entitled "Yes, but only as acts of 'terror'. Three of the replies to question 1 were 'no', 101 indicated "Yes, either as acts of 'terror' or 'terrorism', 6 indicated that it was acceptable to label 'acts carried out directly by the agents of those in power' 'only as acts of 'terrorism". Two of the 120 were left blank.

265 Eight ticked the box entitled "Yes, but only as acts of 'terror'. Three of the replies to question 1 were 'No', 101 indicated "Yes, either as acts of 'terror' or 'terrorism', 6 indicated that it was acceptable to label 'acts carried out directly by the agents of those in power' 'only as acts of 'terrorism". Two of the 120 were left blank.

266 Question 2. Examples of the less credible definitions also cited by one author unless otherwise stated include: 'reprisals', 'counter-terrorism reprisals' 'state sanctioned terrorism'(2), 'state directed international terrorism', 'military despotism', 'totalitarianism', 'death squads', 'human rights violations', 'war crimes'. This is not all the answers given, there are other answers including sentences which are even less credible as labels.

267 Also used by Stohl M. and Lopez G.A. 'Introduction' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Connecticut. 1984.). pp3-10. p4 Indeed only 4 (or 8%) of the 49 authors who accepted the label 'state terror' had answered 'Yes, terror only' in response to question 1, with 44 (90%) of those who had accepted answered 'Yes, either as acts of 'terror' or 'terrorism'. The remaining respondent who constituted the other 2% indicated that he would only accept the use of the term 'state terror' in reference to the external actions of the state.

given examples. It is not surprising that two of these other four labels were joint second in these rankings. The labels 'governmental terrorism' and 'repression' were cited by 27 authors along with the label 'state terrorism'²⁶⁸ which had not been given as an example. The other two of the five examples 'regime terrorism'²⁶⁹ and 'terror from above' came in fourth and fifth with 26 and 18 citations respectively. As for the rest of the 26 credible labels identified by this authors questionnaire, these were 'terrorism'(4 citations²⁷⁰), 'political terrorism'(2), and the rest 'terror'²⁷¹, 'governmental strategies of terrorism', 'elite strategies of terrorism', 'state based terrorism', 'regime of terror'²⁷², 'government terrorism', 'governmental terror'²⁷³, 'government terror'²⁷⁴, 'oppression', 'state repression', 'government repression', 'elite repression', 'political governmental terrorism', 'legal terrorism', 'legitimised terrorism', 'legitimised terror', 'institutionalised terror'²⁷⁵, 'official terrorism'²⁷⁶ were each cited by one author.²⁷⁷

In addition, as a result of his reading this author has identified the use of 20 other different 'terror-centric' labels to describe acts of violence

²⁶⁸ Also used by Schmid A.P. and De Graaf J. *Violence as Communication* (SAGE. London.1982). p2.

²⁶⁹ Also used by Weinberg L.B. and Davis P.B. *An Introduction to Political Terrorism*. (McGraw-Hill. London. 1989.). p8.

²⁷⁰ Also used by O'Sullivan N. (ed.). *Terrorism, Ideology and Revolution*. (Wheatsheaf Book. Brighton. 1986.). pX.

²⁷¹ Also used by Walter E.V. *Terror and Resistance: A Study in Political Violence*. (Oxford University Press. Oxford. 1969). p3.

²⁷² Also used by Perdue W. *Terrorism and the State: A Critique of Domination Through Fear* (Praeger New York. 1989). p19.

²⁷³ Also used by Taylor R.W. and Vanden H.E. 'Defining Terrorism in El Salvador' in Wolfgang M.C. (ed.). *International Terrorism: (The Annals of the American Academy of Political and Social Science. No. 463 Sept. 1982.).* pp 106-118. p113.

²⁷⁴ Also used in title by Homer F.D. 'Government Terror in the United States: An Explanation of Containment Policy' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Connecticut. 1984.). pp167-182.

²⁷⁵ Also used in title by Premo D.L. 'Political Assassination in Guatemala: a case of Institutionalised terror'. *Journal of Inter American Studies and World Affairs*. Vol. 23 (4). Nov.1981. pp429-456.

²⁷⁶ Taylor R.W. and Vanden H.E. 'Defining Terrorism in El Salvador' in Wolfgang M.C. (ed.). *International Terrorism: (The Annals of the American Academy of Political and Social Science. No. 463 Sept. 1982.).* pp 106-118. p116.

²⁷⁷ Less credible definitions also cited by one author unless otherwise stated include: 'reprisals', 'counter-terrorism reprisals' 'state sanctioned terrorism'(2), 'state directed international terrorism', 'military despotism', 'totalitarianism', 'death squads', 'human rights violations', 'war crimes'. This is not all the answers given, there are other answers including sentences which are even less credible as labels.

by those in power²⁷⁸, these are: 'governance by terror'²⁷⁹, 'terror as a government service'²⁸⁰, 'terror by governments'²⁸¹, 'regime terror'²⁸², 'reign of terror'²⁸³, 'legalised terrorism'²⁸⁴, 'institutional terror'²⁸⁵, 'terrorism by public authority'²⁸⁶, 'terrorism from above'²⁸⁷, 'establishment terrorism'²⁸⁸, 'wholesale terror'²⁸⁹, 'primary terrorism'²⁹⁰, 'counterterror'²⁹¹, 'police terrorism'²⁹², 'police state

²⁷⁸ Plus less credible variations on the theme. Der Derian used the term [state] endo terrorism to describe internal state violence, as opposed to 'state exo-terrorism' which is defined as "state supported kidnapping, hostage taking, or murder by proxy terrorists, state exo-terrorism is for the most part seen as a Middle Eastern continuation of war by condemnatory means" Der Derian J. *Anti Diplomacy: Spies, Terror, Speed and War*. (Blackwell, Oxford. 1992). p111. For 'terrorism by regimes' see Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland, Amsterdam. 1984.). p171. For 'internal state terrorism' see title of Anderson K. 'Beginning to Theorise about Internal State Terrorism in the Third World'. *Terrorism and Political Violence*. Vol. 2 (1). 1990. pp106-111. For 'repressive state terror' see Crelinsten R.D. 'Power and Meaning: Terrorism as a Struggle over Access to the Communication Structure' in Wilkinson P. and Stewart A.M. *Contemporary Research on Terrorism* (Aberdeen University Press. Aberdeen. 1987.). pp419-452. p415

²⁷⁹ Schlagheck D.M. *International Terrorism: An Introduction to the Concepts and Actors*. (Lexington Books. Lexington.1988.). p45.

²⁸⁰ De Swann A. 'Terror As Government Service' in Hoefnagels M. (ed.). *Repression and Repressive Violence*. (Swets and Zeitlinger. Amsterdam. 1977.). pp40-50. p40

²⁸¹ Schlagheck D.M. *International Terrorism: An Introduction to the Concepts and Actors*. (Lexington Books. Lexington.1988.). p45

²⁸² Also used by Perdue W. *Terrorism and the State: A Critique of Domination Through Fear* (Praeger New York. 1989.). p19

²⁸³ Also used in title by O'Kane R.T.H. *The Revolutionary Reign of Terror*. (Aldershot. Elgar. 1991.).

²⁸⁴ Almond H.H.(Jnr). 'The Use of Organized Groups by States as Vehicles To Promote their Foreign Policy' in Han H.H. *Terrorism, Political Violence and World Order*. (University Press of America. London. 1984.). pp229-266. p233.

²⁸⁵ Perdue W. 'Terrorism and the State: A Critique of Domination Through Fear' (Praeger New York. 1989.). p4.

²⁸⁶ Van Der Kroef M. 'Terrorism by Public Authority: the case of the death squads of Indonesia and the Philippines'. *Current Research on Peace and Violence*. Vol.10 (4).1987. pp143-158. p143.

²⁸⁷ Homer F.D. 'Government Terror in the United States: An Explanation of Containment Policy' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Connecticut. 1984.). pp167-182. p167.

²⁸⁸ Homer F.D. 'Government Terror in the United States: An Explanation of Containment Policy' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Connecticut. 1984.).pp167-182. p167.

²⁸⁹ Herman E.S. *The Real Terror Network*. (South End Press. Boston. 1982.). p83.

²⁹⁰ Herman E.S. and O'Sullivan G. *The Terrorism Industry: The Experts and Institutions that Shape our View of Terrorism*. (Pantheon. New York.1989.). p9.

²⁹¹ Thornton T.P. 'Terror as a Weapon of Political Agitation' in Eckstein H. (ed). *Internal War Problems and Approaches*. (The Free Press of Glencoe, Collier Macmillan.

terrorism'²⁹³, 'rule by terror'²⁹⁴, 'state rule by terrorism'²⁹⁵, 'enforcement terror'²⁹⁶, 'institutional domination through fear'²⁹⁷, and 'official 'legally' sanctioned terrorism'²⁹⁸.

As one can see this list is not exhausted for one could merely add the term terror or terrorism to whichever suffix or prefix has not had both variations applied to it. In addition to this many of the authors use the terms interchangeably²⁹⁹. The preference here then is for the term 'state terrorism'. A choice which can only be successfully explained in relation to these alternatives. However rather than go through the list and explain the reasons for rejecting each variation on the theme one by one, a number of comments will be made that explain the rejection of all of the other mentioned terms.

The first comment explains the rejection of individual terms such as 'terror', 'terrorism' or 'political terrorism'. Whilst this author sees the phenomenon as a part of the topic of 'terrorism' or more precisely 'political terrorism', these terms are rejected here for they are considered too broad in that they fail to distinguish between the actors'

London. 1964.). pp71-100. He seems to prefer the label 'enforcement terror' which he used in front of the bracketed label 'counterterror'p72. Also Herman "what in western terrorism semantics is called "counterterror" is in reality a dressed up form of state (wholesale) terror" Herman E.S. 'U.S. Sponsorship of international Terrorism: An Overview'. *Crime and Social Justice*. No.27-28. 1986. pp1-31. p6.

292 See title of Engineer A.A. 'Communal Violence and Police Terror'. *Economic and Political Weekly*. Vol.21(9). Mar1.1986. pp382-3.

293 Clark R. 'The Dimensions of Terrorism' in Kochler H. (ed.). *Terrorism and National Liberation*. (International Progress Organisation. Peter Lang. Frankfurt. 1988.). pp41-46. p44.

294 Walter E.V. *Terror and Resistance:A Study in Political Violence*. (Oxford University Press. Oxford. 1969.). p3.

295 Der Derian J. *Anti Diplomacy: Spies, Terror, Speed and War*. (Blackwell, Oxford. 1992.). p111.

296 Thornton T.P. 'Terror as a Weapon of Political Agitation' in H. Eckstein (ed) *Internal War Problems and Approaches* (The Free Press of Glencoe Collier Macmillan London 1969.). pp71-100. p73.

297 Perdue W. *Terrorism and The State: A Critique of Domination Through Fear*. (Praeger. New York. 1989.). p14.

298 Oppenheimer M. 'Terrorism is Sometimes Justified' in Szumski B. (ed.). *Terrorism : Opposing Viewpoints*. (Greenhaven Press. St. Paul. Minnesota. 1986.). pp86-89. p87.

299 For example, Homer F.D. 'Government Terror in the United States: An Explanation of Containment Policy' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Connecticut. 1984.). pp167-182.uses the terms 'Reign of Terror', "Establishment terrorism" 'Terror from Above' and "Government Terror"(which is his preference) , as well as the term 'Terror' within the title, without distinguishing between them.

perpetrating the deeds. However before going on to explain the rejection of other prefixes or suffixes it is helpful to explain the choice of the suffix 'terrorism' over 'terror'. In doing so one will have explained the rejection of approximately half of potential labels. The decision to choose to use a label with the word 'terrorism' rather than 'terror' within it, was made for two reasons. The primary one being that it equates the use of such terrorist violence with that by insurgent or non-state groups. This then allows one to envisage a two part typology of political terrorism based on the characteristic, by whom?, that is those in power and those without. The second is that the word terror already means something else, that is the actual emotion produced³⁰⁰. So to introduce the same word to describe the process merely confuses things and is probably the reason that most authors talk of sub state or insurgency 'terrorism'.

As for the choice of prefix/suffix being the 'state' this too can best be explained in relation to the alternatives. As noted in the previous paragraph this author believes that state terrorism can be viewed alongside insurgency terrorism as the two parts of the concept of (political) 'terrorism', but that an additional word or number of words would have to be used in order to distinguish between the two types of actors in any typology. Schmid for example suggests that a neutral term such as 'regime terrorism' might be preferable, because the term 'state'

300 Thornton wrote, "[t]he word 'terror' has two meanings. The basic one is an induced state of fear or anxiety within an individual or group of individuals. It is sometimes called 'subjective terror'. Derived from this meaning is the use of 'terror' to describe the tool that induces the state of being terrified. This tool is variously called 'terror', 'objective terror' and terrorism. Although it would be convenient to distinguish simply between terror (the psychic state) and terrorism (the tool) this distinction is not advisable, for frequently 'terrorism' and 'terror' are used interchangeably to denote objective terror...Whenever we use the word 'terror', it will be understood to refer to the tool". Thornton T.P. 'Terror as a Weapon of Political Agitation' in Eckstein H. (ed). *Internal War Problems and Approaches* (The Free Press of Glencoe, Collier Macmillan. London. 1964.). pp71-100. p71. Calvert argues that "we must always distinguish between 'terror' as a *technique* and 'terrorism' as a *belief in the value of terror*". Calvert P. 'Terror in the Theory of Revolution' in O'Sullivan N. (ed.) *Terrorism, Ideology and Revolution*. (Wheatsheaf Books. Brighton. 1986).pp27-45. p38. N. O'Sullivan himself noted that "[t]error refers to a psychological state - the state that is , of extreme fear and anxiety. The addition of an 'ism', however lifts the concept out of a realm of psychology and relocates it in the sphere of beliefs and ideas". O'Sullivan N. 'Terrorism, Ideology and Democracy' in O'Sullivan N. (ed.). *Terrorism, Ideology and Revolution*. (Wheatsheaf Book. Brighton. 1986.). pp3-26. p5. Sederberg wrote that "we easily confuse the actor (terrorist), the action (terrorism) and the effect (terror)" Sederberg P. *Terrorist Myths: Illusion, Rhetoric and Reality*. (University of Southern California. Prentice Hall, New Jersey. 1989). p29.

refers to a territory, a people, a government; while 'regime' is less broad excluding territory and most of the population and at the same time does not cover the whole of government³⁰¹. However this author prefers to use the term the term 'state' precisely because, unlike the alternatives, it reminds the analyst of the special conceptual problem that this permanently entails. That is, it highlights the phenomenon which is at the heart of the conceptual question as to whether or not terrorism by those in power can exist; and (if so) what distinguishes it from the rest of the State's use of violence. More specifically, the reason for rejecting the term 'regime', is that the works on insurgent groups themselves do not usually distinguish between the different leaderships that the insurgent groups have over time. The issue of treating like with like is an important part of this methodology.

As for the other alternatives, the prefix 'government' (and variations of it) can mean various things, as do words such as 'establishment' or 'elite'. Indeed if these latter two were applied one could still see them as a reference to terrorism carried out by groups representing the wealthiest section of society. Variations which include the term 'strategies of' suffer from this and are also unnecessarily extrapolated. The suffix 'from above' is not much better than the former and can also be read as a spatial dimension (i.e. from aircraft), or moreover referring to purely internal violence. This latter fault of course also affects the use of the term 'reign of' and any variations on the theme which include the term 'internal'.

Those labels which use the with the prefix 'official', 'legalised', 'enforcement', 'legitimised', 'institutionalised' are too narrow in that they can be read to exclude illegal acts of violence by the state. This criticism also applies to 'terrorism by public authority' which is also longwinded *vis-a-vis* this author's choice. Terms possessing only the prefix 'police' (or 'military' for that matter) are too specific in regard to their identification of actors. They also appear to ignore the possibility that the other may exist, and seem to imply that such actions would be solely an internal (or perhaps even external) phenomenon.

³⁰¹ Schmid notes that he is indebted to H.Lobert the Belgian chargé d'affaires in Athens. Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland. Amsterdam. 1984.). p105.

The prefix 'state' is also relatively neutral in comparison to the *apriori* biased (though perhaps accurate) labels with the words 'primary', 'wholesale', and 'counter' within them. When attached to the term terrorism the latter prefix is particularly confusing for as already noted this term is used to describe those various passive and potentially violent measures implemented to limit the effects of insurgency terrorism. Whilst as already noted labels such as 'repression' or 'oppression' (or variations of them i.e. 'repressive') could also be unnecessarily confusing³⁰².

Yet the terms used in the opening chapter have not only identified these problems but have raised other issues such as, is there a difference between the states activities within the domestic and international arena?; and what distinguishes 'state terrorism' from other concepts such as 'war' and 'law' and human rights?. However the main lack of consensus within the literature which this thesis is concerned with is the definition of the phenomena of terrorism by those in power by whatever label.

³⁰² Also 'War terrorism' has the problem that it could be seen as excluding both internal state terrorism, as well as such activities in 'peacetime' or without a declaration of war. Likewise 'endo terrorism' is relatively unknown and requires a prefix of some kind in order to distinguish it from insurgency terrorism.

The Structure of the Thesis.

In light of these aims the thesis can be seen to be split into two main parts in addition to this introductory chapter, the concluding chapter and the appendix. The first consist of a conceptual part, which addresses the issue of defining state terrorism; the second consists of an application of various definitions of state terrorism to various Israeli counter-terrorist actions carried out at home and abroad. It is the results of these applications along with earlier comments concerning the strengths and weaknesses of each various definitions which will be reviewed in the concluding chapter which will (re)assess the idea of defining the concept of State terrorism as a whole.

The conceptual part which immediately follows this introductory chapter can be seen to be made up of four chapters. The first of these entitled "The Problem of Defining", examines the debates surrounding the possibility of producing such a conceptual definition and the means to achieve it. The second entitled: "A Legalistic Approach" involves an examination of the legalistic approaches to defining terrorism and state terrorism. The third chapter entitled: 'An Analytical Attempt' produces a definition of sub-state terrorism, whilst simultaneously explaining the relationship of terrorism to other concepts used to describe this type of political violence. This is followed by a fourth of these chapters (the fifth altogether) in which the concept of the State is examined and fused with the findings of the previous chapter to produce a comprehensive definition which enables the State to be labelled terrorist.

The application part can be seen to consist of two chapters. In the first the various definitions of terrorism are applied to various counter-terrorist actions of Israel within Israel and the West Bank. In the second the various definitions of terrorism are applied to various Israeli counter-terrorist actions committed abroad.

It is line with this overall structure that this thesis will now go on to look at the problem of defining.

The Problem of Defining

"What words mean few can say, but with words we govern men".

Benjamin Disraeli³⁰³

The Need for a Definition

Within the literature on 'terrorism' there is a debate over the actual need for a definition. Lambert for example has asserted that the "term 'terrorism' is unsatisfactory", presumably because, "[i]t is emotive, highly loaded politically and lacking a universally, or even generally-accepted definition".³⁰⁴ Support for the view that there is no generally accepted definition can be found in the works of Gibbs, Hoffman, Crenshaw, Thackrah and Farrell³⁰⁵ as well as Schmid and Jongman who claimed that: "[t]he search for an adequate definition is still on"³⁰⁶. Schmid and Jongman's conclusion was based on two factors. The first was their identification of 109 definitions of the term 'terrorism' produced between 1936 and 1981. The second was the fact the most cited answer to their question: "Whose Definition of Terrorism Do you find Adequate for Your Purposes"? was: "There is no adequate definition"³⁰⁷.

³⁰³ Harris P. *Foundations of Political Science*. (Hutchinson. London. 1976.). p53. No other reference.

³⁰⁴ Lambert J.L. *Terrorism and Hostages in International Law*. (Grotius Publications Cambridge.1990.). p13.

³⁰⁵ See abstract of Gibbs J.P. 'Conceptualization of Terrorism'. *American Sociological Review*. Vol. 54. 1989. pp329-340. p329. It is the rationale behind Hoffman's thesis, Hoffman R.P. *Terrorism A Universal Definition* (Claremont Graduate School. Ph.D. 1984). According to Farrell, "[t]he term has no precise and completely accepted definition". Farrell. W.R. 'Terrorism Is...?'. *Naval War College Review*. Vol. 33 (3) 1980. pp68-72). p64. Similarly Crenshaw wrote, "there is scarcely any agreement on the definition of terrorism." Crenshaw M. *Revolutionary Terrorism. An Introduction* (Hoover Institute Press. Stanford California. 1978).p6. Thackrah wrote, "[i]n the field of terrorism there is no agreement about any single definition" Thackrah J.R. *The Encyclopedia of Terrorism and Political Violence*. (Routledge, Kegan and Paul. London. 1987.).p57. The wording is identical to Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature*. (North Holland. Amsterdam. 1984.). p110.

³⁰⁶ Schmid A.P. and Jongman A.J. *Political Terrorism: A new guide to actions, authors, concepts and databases*. (SWIDOC. Amsterdam. 1988). p1.

³⁰⁷ Schmid A.P. and Jongman A.J. *Political Terrorism: A new guide to actions, authors, concepts and databases*. (SWIDOC. Amsterdam. 1988). p73. Table IV.

Although here it should be noted that many, if not most, writers on the subject appear to avoid this debate, with slightly less avoiding a definition altogether. An example of an author who avoids the use of a definition is Heradstrait. After noting that the term 'terrorism' is both vague and has a variety of meanings, Heradstrait wrote: "I shall not be trying to define terrorism because I believe that discussions on definitions do not take us further with the problem with which we are dealing"³⁰⁸. Heradstrait is unusual in that he actually justifies his omission, as is Cooper who claimed that for the most part, the exercise of defining: "has only an aesthetic appeal at best, while at worst it can be so inhibiting as to cause a functional seizure"³⁰⁹.

Sederberg has suggested at least one reason for this aversion to define the term. He noted that when scholars threaten to define their terms, readers eyes often begin to glaze over for the results of these well-intentioned efforts are often dry, dead things, or "concept mummies" as Nietzsche termed them. The result of this is that many academics are tempted to treat the meanings of commonly-used terms, such as 'politics', 'violence' or 'terrorism' as self-evident and commonly understood.³¹⁰

In 1985, Lacquer claimed that ten years of debates on definitions have not enhanced our knowledge of the subject to a significant degree³¹¹, and elsewhere he claimed that a comprehensive definition of terrorism

³⁰⁸ Heradstrait D. cited without reference by Ezeldin A.G. *Terrorism and Political Violence: An Egyptian Perspective*. (University of Illinois. Chicago.1987). p20. Similarly an anonymous quote cited by Schmid describes Lacquer's work as "a book on an unidentified subject, so that the author can include whatever he sees fit", Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature*. (North Holland. Amsterdam. 1984.). p420 and Schmid A.P. and Jongman A.J. *Political Terrorism: A new guide to actions, authors, concepts and databases*. (SWIDOC. Amsterdam. 1988). p3. Similarly Hoffman wrote that Clutterbuck's work entitled Kidnap and Ransom: The Response completely avoids the problem of formulating a definition of terrorism. Hoffman R.P. *Terrorism A Universal Definition* (Claremont Graduate School. Ph.D. 1984.). p53.

³⁰⁹ Cooper H.H.A. 'Terrorism: The Problem of the Problem of Definition'. *Chitty's Law Journal*. Vol. 26. (3).1978. pp105-108. p.105.

³¹⁰ Nietzsche F. The Twilight of the Idols, in Kaufmann W. (ed). *The Portable Nietzsche* (Penguin/Viking. Baltimore. 1970.) in Sederberg P. *Terrorist Myths: Illusion, Rhetoric and Reality*. (University of Southern California. Prentice Hall, New Jersey. 1989.). p3. However to succumb to such a temptation, argued Sederberg, would be an error.

³¹¹ Lacquer in response to Schmid and Jongman's questionnaire Schmid A.P. and Jongman A.J. *Political Terrorism: A new guide to actions, authors, concepts and databases*. (SWIDOC. Amsterdam. 1988). p3.

which covered all of the varieties that have appeared throughout history does not exist³¹², nor would it be found in the foreseeable future³¹³. Yet his answer was not quite as dismissive as that produced by the 1984 Committee of the French Senate which pronounced that: "any definition is practically guaranteed to fail"³¹⁴. Such a conclusion was echoed by C.C.O'Brien who said that the labels 'terrorism' and 'terrorist' are not purely analytical terms and cannot be made to work as such³¹⁵. It was his first point that Hocking had in mind when she argued that:

"academic analyses have generally been built around the question 'what is terrorism?'. By posing this question and by assuming that it can be answered in terms of specific attributes, terrorism has been treated as an essentially analytical term, one for which particular objective features can be pointed as a defining characteristic.....'Terrorism' however is not a neutral or purely descriptive term. In the sense that its understanding is based on perceptions of legitimacy structured according to a bench-mark of political and social 'normality'; 'terrorism' is an ideological construct. As such, the question to be asked is not the simple one, 'what is terrorism?' but the more complex one of 'how does the ideological construct of terrorism function?'"³¹⁶

There can be little doubt that within the everyday exercise of real political power across the globe, Hocking's conclusion, and that of Horowitz who claimed that: "the definition of someone who is a terrorist is purely a labelling device"³¹⁷, is correct. Viewed from this perspective, it is not difficult to understand both why the public could

312 Lacquer W. *Terrorism* (Weidenfeld and Nicolson. London.1972.).p7. Similarly Paust J.J. 'A Definitional Focus' in Alexander. Y and Finger S. (eds). *Terrorism: Interdisciplinary Perspectives*. (McGraw-Hill. Maidenhead.1977.). pp18-29. p.20.

313 Lacquer W. *Terrorism* (Widenfeld and Nicolson. London. 1977). p5.

314 Committee of the French Senate cited without further reference by Kegley C.W. 'The Characteristics of Contemporary International Terrorism' in Kegley C.W.(ed.). *International Terrorism: Characteristics; Causes; Controls*. (St.Martin's .New York. 1990). pp11-26. p12.

315 O'Brien C.C. *Herod: Reflections on Political Violence* p72 cited by Hocking J. 'Orthodox Theories of Terrorism': the Power of Politicised Terminology'. *Politics* (Sidney). Nov.1984. pp 103-110. p103.

316 Hocking J. 'Orthodox Theories of Terrorism': the Power of Politicised Terminology'. *Politics* (Sidney). Nov.1984. pp 103-110. p103.

317 Horowitz I.L. 'Political Terrorism and State Power'. *Journal of Political and Military Sociology*. Vol. 1.1973. (no further reference) cited by Thackrah J.R. *The Encyclopedia of Terrorism and Political Violence*. (Routledge, Kegan and Paul. London. 1987). p59.

become the target of political disinformation by those who crave the power that such public support (through fear) would allow them; and how the word terrorism has become what Jenkins terms a "fad word" used promiscuously and often applied to a variety of acts of violence which are not strictly terrorism³¹⁸. Hitchens similarly complained that the term terrorism:

"disguises reality and impoverishes language and makes a banality out of the discussion of war and revolution and politics. It is the perfect instrument for the cheapening of public opinion and the intimidation of dissent....Stalin was a terrorist, Mao was a terrorist, Arabs are terrorist, Europeans are soft on terrorism, Latins are riddled with it. Whish, Whish, Whish and there goes history, there goes inquiry, there goes proportion. All is terror. The best that can be said for this method is that it economises on thought. You simply, unveil it like a Medusa's head and turn all discussion into stone"³¹⁹.

This assertion that 'terrorism' is a term of political discourse and as such is often employed for political effect in the same way as the terms such as 'democracy' and 'freedom' are employed in the political arena, constitutes one of the three dimensions to the definition problem noted by Thomas and Stanley³²⁰. The second point noted by Thomas and Stanley was the claim that whilst commentators often eschew overtly political usage, and recognise a question of value and neutrality, they may nevertheless find it impossible to escape from positions profoundly influenced by their political and cultural environments³²¹. According to Thomas and Stanley this factor produces the third and more general

318 Jenkins B.M. 'The Study of Terrorism: The Definitional Problem'. in Alexander Y. and Gleason J.M. (eds.) *Behavioural and Quantitative Perspectives on Terrorism*. (Pergamon Press. Oxford. 1981.). pp3-10. p3.

319 Hitchens C. 'Wanton Acts of Usage' Harper's, September. 1986. p68-69 cited in Sederberg P. *Terrorist Myths: Illusion, Rhetoric and Reality*. (University of Southern California. Prentice Hall, New Jersey. 1989). p26.

320 Thomas P.A. and Standley T. 'Classifying Terrorism' in Kochler H. (ed.). *Terrorism and National Liberation*. (International Progress Organisation. Peter Lang. Frankfurt. 1988.). pp67-78. p67.

321 Thomas P.A. and Standley T. 'Classifying Terrorism' in Kochler H. (ed.). *Terrorism and National Liberation*. (International Progress Organisation. Peter Lang. Frankfurt. 1988.). pp67-78. p67.

dimension; whether it is possible to attain objectivity in the sense of aiming at an absolute, universal truth or criterion³²².

Other authors can be seen to be in agreement with this third point albeit for other reasons. For example in discussing the concept of state terrorism with regard to India, Singh claimed:

"In a class divided, exploitative society like ours, on all important issues in philosophy as in real life, neutrality is an illusion ... An explanation thus always has a 'value slope', it determines the prescription as well"³²³.

Likewise Cooper claimed that a "colourless" definition is a contradiction in terms; the representation derives meaning and significance only through, and only from, the thought processes of the definer³²⁴. For Cooper, the task of defining is undertaken in order to give meaning or significance to an idea or some aspect of reality: "the problem of definition begins with the definition of the problem"³²⁵. He goes on to say that the business of definition takes on importance when we find it necessary to relate ourselves and others to some abstraction, or reality; it is thus a necessary part of meaningful communication. Like any other, the word 'terrorism' is invested in meaning and significance as a result of the process of human reasoning. Reality is, as it were, filtered through the human mind and it is inevitably changed in the process. For Cooper definitions are therefore always coloured by the subjectivity of the definer. For, however artificially neutral they seek to make their picture, what is presented will always bear traces of their fundamental premises or technique in trying to eradicate them³²⁶.

³²² Thomas P.A. and Standley T. 'Classifying Terrorism' in Kochler H. (ed.). *Terrorism and National Liberation*. (International Progress Organisation. Peter Lang. Frankfurt. 1988.). pp67-78. p67.

³²³ Singh R. 'Terrorism, State Terrorism and Democratic Rights'. *Economic and Political Weekly*. Vol. 27 (6). Feb. 8. 1992. pp 279-289. p279.

³²⁴ Cooper H.H.A. 'Terrorism: The Problem of the Problem of Definition'. *Chitty's Law Journal*. Vol. 26. No3.1978. pp105-108. p106

³²⁵ Cooper H.H.A. 'Terrorism: The Problem of the Problem of Definition'. *Chitty's Law Journal*. Vol. 26. No3.1978. pp105-108. p105.

³²⁶ Cooper H.H.A. 'Terrorism: The Problem of the Problem of Definition'. *Chitty's Law Journal*. Vol. 26. No3.1978. pp105-108. p106.

Jenkins unknowingly supports Thomas and Standly's first two points, indeed he can be seen to illustrate the overlap between the first and second parts of the problem of defining when he wrote:

"If one group can successfully attach the label terrorist to its opponent, then it has indirectly persuaded others to adopt its moral and political point of view or at least reject the terrorist's view. Terrorism is what the bad guys do. This drawing of boundaries between what is legitimate and what is illegitimate, between the *right* way to *fight* and the *wrong* way to fight brings high political stakes to the task of definition"³²⁷.

The term 'terrorism' then signifies an element of political and moral evaluation in its every use - it both describes and proscribes³²⁸. Likewise, Bonante claimed that deciding whether an action is terrorist: "is more the result of a verdict than the establishing of a fact; the formulating of a social judgement rather than the description of a set of phenomena"³²⁹.

These last three comments, highlight what this author considers to be the crux of the problem of defining the word 'terrorism'. At the heart of any analysis of the use of the term is the fact that the concept of terrorism undoubtedly carries with it (the clearly pejorative) implications of illegitimacy³³⁰. The conventional view of terrorism is to treat it as a special type of deviant behaviour and as a result the term 'terrorism' is viewed alongside that 'crime' and 'international aggression' as abnormal, unacceptable and illegal forms of behaviour³³¹. It is because most definitions are predicated on the

327 Jenkins B. *International Terrorism: The Other World War*. (Rand. Santa Monica. California. 1985.) in Sederberg P. *Terrorist Myths: Illusion, Rhetoric and Reality*. (University of Southern California. Prentice Hall, New Jersey. 1989.). p23.

328 Hocking J. 'Terrorism and Counterterrorism: Institutionalising Political Order'. *Australian Quarterly*. Vol. 58 (3). 1987. pp297-307. p297.

329 Bonante L. 'Some Unanticipated Consequences of Terrorism' *Journal of Peace Research*. 16 (3). 1979. p198 cited by Hocking J. 'Terrorism and Counterterrorism: Institutionalising Political Order'. *Australian Quarterly*. Vol. 58 (3). 1987. pp297-307. p297.

330 Wilkinson P. 'Some Observations on the Relationships between Terrorism and Freedom' in Warner M. and Crisp R. (eds.) *Terrorism, Power and Protest*. (Edward Elgar. Aldershot. 1990.).pp44-53. p46.

331 Purkett H. 'Dealing with Terrorism: Deterrence and the Search for an Alternative Model' in Banks M.(ed) *Conflict in World Society*. (St. Martin's Press. 1984.). p162. cited by Kegley C.W. Jnr., Sturgeon T.V. and Wittkopf E.R. 'Structural Terrorism: The Systematic Sources of State Sponsored Terrorism' in Stohl. M and Lopez G.A. *Terrible*

assumption that some classes of political violence are justifiable (legitimate), while others, including terrorism, are not that 'terrorism' is seen primarily as a moral problem³³². This results in authors such as Calvert writing that, "[n]othing justifies the use of terror in any circumstances it is always morally unacceptable"³³³.

The overall result is that a number of analysts appear to have begun at the end with prescription, rather than at the beginning with description and definition. Wilkins claimed that: "some of the definitions we have are simply condemnations of terrorism"³³⁴. He sees this question of morality as one of the main problems that plagues discussions on terrorism. A point also noted by Provizer who suggested that if one took away the emotive connections of the term, the definitional disagreements would fade in significance³³⁵. Whilst Bell goes further in suggesting that the very word *terror* may also be a hindrance in the investigation of violence³³⁶. Unsurprisingly Wilkins overcomes this potential problem by becoming one of the few analysts to state that "terrorism can under certain circumstances be morally

Beyond Endurance (Greenwood Press. Westport, Connecticut.1988) pp13-34. p13. Support can be seen to be gained from the words of Falk, "regardless of historical rule or normative vision recourse to political violence of a terrorist character can never be excused or justified". Falk R. *Revolutionaries and Functionaries: The Dual Face of Terrorism*. (E.P.Dutton. New York. 1988.). p77. Also Wilkinson who wrote, "what fundamentally distinguishes terrorism from other forms of organized violence is not simply its severity but its *amorality*...Indiscriminate terror can never in principle, be morally justified. "Wilkinson P. 'Three Questions on Terrorism' *Government and Opposition* Vol.8 (3) Summer 1973. pp290-312. p292.

³³² AfterThackrah J.R. *The Encyclopedia of Terrorism and Political Violence*. (Routledge, Kegan and Paul. London. 1987.). p54. His sentence, "[t]errorism is also a moral problem and attempts at definitions are predicated on the assumption that some classes of political violence are justifiable whereas others are not" is strikingly similar to Wardlaw's "[a] major stumbling block to the serious study of terrorism is that, at base, terrorism is a moral problem. This is one of the major reasons for the difficulty over the definition of terrorism. Attempts at definitions often are predicated on the assumption that some classes of political violence are justifiable whereas others are not". Wardlaw G. *Political Terrorism: Theory, Tactics and Countermeasures*. (Cambridge University Press. Cambridge. 1982.). p4.

³³³ Calvert P. 'Terror in the Theory of Revolution' in O'Sullivan N. (ed.) *Terrorism, Ideology and Revolution*. (Wheatsheaf Books. Brighton. 1986.).pp27-45. p41.

³³⁴ Wilkins B T. *Terrorism and Collective Responsibility*. (Routledge. London. 1992). p2

³³⁵ Provizer N.W. 'Defining Terrorism' in Slann M. and Schechterman B. (eds). *Multidimensional Terrorism*. (Lynne Rotiennner. Boulder. 1987). pp3-10. p9.

³³⁶ Bell J.B. 'Terror: An Overview' in Livingstone M.H. (ed.). *International Terrorism in the Contemporary World*. (Greenwood Press. Westport. Connecticut.). p26 cited by Sederberg P. *Terrorist Myths: Illusion, Rhetoric and Reality*. (University of Southern California. Prentice Hall, New Jersey. 1989.). p39.

justifiable"³³⁷. Whilst Provizer states that no definition can solve the moral dilemma connected to terrorism when terrorism is seen as a moral problem³³⁸. Such an overall reading is echoed by Duvall and Stohl who claimed that:

"Terrorism is an emotive word. Few of us hear it or speak it neutrally. Rather, we use it generally to provide emotive meaning for the interpretation of actions. As a consequence, emotive and denotative (or analytical) features are intermixed in usage. We tend, on the one hand, to over extend the reasonable bounds of the concept by labelling as terrorism any and all repugnant and/or violent actions by "bad actors" and on the other hand, artificially to collapse conceptual bounds by failing to use the term to refer to actions when denotative criteria are satisfied but when actors or the context of action do not engender the appropriate emotional response"³³⁹

Following this examination of the problem of defining, the issue then becomes: 'Should we continue to search for a definition of terrorism?', or 'Should we just accept as reality the clichés, "I am a freedom fighter, he is a terrorist", and "one man's terrorist is another man's patriot?"³⁴⁰.

³³⁷ Wilkins B T. *Terrorism and Collective Responsibility*. (Routledge. London. 1992.). p6. Others who claim that terrorism can under certain circumstances be morally justified include Hughes who wrote: "Dr. Walzer in a brilliant passage condemns terrorism. I wish I could unequivocally agree with him". Hughes M. 'Terrorism and National Security'. *Philosophy*. Vol. 57. 1982. pp5-25. p47. Similarly V. Held wrote "we can rule out the view that terrorism is by definition always morally wrong" Held V. 'Terrorism, Rights and Political Goals' in Frey R.G. and Morris C.W. (eds). *Violence, Terrorism and Justice*. (Cambridge University Press. Cambridge. 1991.). pp59-85. p66.

³³⁸ Provizer N.W. 'Defining Terrorism' in Slann M. and Schechterman B. (eds). *Multidimensional Terrorism*. (Lynne Rotienner. Boulder. 1987.). pp3-10. p8.

³³⁹ Duvall R.D. and Stohl M. 'Governance by Terror' in Stohl M. (ed.) *The Politics of Terrorism*. (3rd ed. Marcel Dekker. New York. 1988.). pp231-272. p231-232.

³⁴⁰As "David George points out, the cliché is absurd, for it runs together two completely different types of definition - one by reference to means (terror), the other by reference to ends (freedom); further, there is no necessary connection between the two, for terror may be used for ends other than freedom, and freedom may be fought for by nonterroristic means". Warner M. and Crisp R. 'Introduction' in Warner M. and Crisp R. (eds.) *Terrorism, Power and Protest*. (Edward Elgar. Aldershot. 1990.). pp1-14. p3 Similarly Ludwikowski wrote "freedom fighters use violence but *they do not terrorize* women and children. If they do, they become terrorists subject to criminal liability". Ludwikowski R.R. 'Aspects of Terrorism: Personal Reflections'. *Terrorism: An International Journal*. Vol.10(3). 1987. pp175-184. p182. Also Netanyahu B. "'freedom fighters' don't use terrorism, by definition" Netanyahu B. (ed.). *Terrorism: How The West Can Win*. (Farrar Strauss, Giroux. New York. 1986.). p27. cited by Sederberg P. *Terrorist Myths: Illusion, Rhetoric and Reality*. (University of Southern California. Prentice Hall, New Jersey. 1989.). p28.

This author believes there is reason to continue in search for a definition of terrorism. A view which is supported by the majority of respondents to Schmid's question:

"Do you find that endeavours to come to commonly-agreed-upon definitions in the field of Political violence in general and Terrorism in particular are: a) a waste of time; b) necessary precondition for cumulative research; c) other".

Only six of the 50 respondents chose "a waste of time", 28 chose a "necessary precondition for cumulative research" and 13 chose "other"³⁴¹. Like the majority who replied to Schmid's question, this author is not convinced that the potential problems already identified outweigh the benefit of producing and using a definition. Other authors also appear to support this view. Wilkinson for example has argued that: "[m]ost political-strategic concepts are slippery and elude easy definition. But that does not mean that we cannot or should not use them".³⁴² Although an 'honest' attempt at producing and applying a 'slippery' definition should not be confused with the deliberate and cynical use of flexibility in labelling 'terrorism'. An example of the cynical use of flexibility is that quantitative study of terrorist victims carried out by the Central Intelligence Agency in 1981. It was then that the Reagan administration ordered the C.I.A. to study the frequency of terrorist incidents against U.S. citizens, apparently in the hope of showing an increase in order to justify more aggressive measures than those taken by the previous Carter administration. However after the agency concluded that such attacks were declining the Government ordered the C.I.A. to do a new study using a broader definition of terrorism. This second study showed terrorism on the rise!³⁴³

Wilkinson is also useful to quote in opposition to another of the potential problems raised by Thomas and Stanley. For Wilkinson:

³⁴¹ Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature*. (North Holland. Amsterdam. 1984.). p8.

³⁴² Wilkinson P. 'Some Observations on the Relationships between Terrorism and Freedom' in Warner M. and Crisp R. (eds.) *Terrorism, Power and Protest*. (Edward Elgar. Aldershot. 1990.). pp44-53. p44.

³⁴³ Quigley J. 'Government Vigilantes at Large: The Dangers to Human Rights From Kidnapping Suspected Terrorists'. *Human Rights Quarterly*. Vol.10 (2).1988. pp193-213. p210. Not to mention its application to our enemies' actions only.

"The notion that we should be aiming to restrict ourselves to using a strictly 'value free' language of politics is based on a fundamental mistake. We cannot escape the context of our humanity, values, beliefs and experience. Nor can we use our concepts meaningfully unless we relate them to a specific context"³⁴⁴.

Finally in reply to Thomas and Standby's remaining point, it is credible to claim that if one subtracts the moral point from this concept (or other contested political concepts) then we would simultaneously subtract the rationale for grouping its various components within the rubric of the concept!³⁴⁵ Indeed for Connolly, the author of these words, it is precisely the dialectical relation between the criteria of a concept and its (moral) point or purpose in our language which makes such contested concepts the subject of intense dispute.³⁴⁶

This thesis then goes along with Sederberg and like minded authors such as Sloan who have asserted that: "one can and must devise objective criteria to study, incidents of terrorism"³⁴⁷. For as Schmid and Jongman recognised, the lack of one: "plays into the hands of those experts from the operational anti-terrorist camp who have a 'we-know-it-when-we-see-it' attitude, that easily leads to double standards"³⁴⁸. It is also in agreement with Gibbs who argued that it is: "manifestly absurd to pretend to study terrorism without at least some kind of definition of it"³⁴⁹. The reasons being that rigorous standards of definition are required for such tasks as scholarly investigation or legal codification,

³⁴⁴ Wilkinson P. 'Some Observations on the Relationships between Terrorism and Freedom' in Warner M. and Crisp R. (eds.) *Terrorism, Power and Protest*. (Edward Elgar. Aldershot. 1990.). pp44-53. p44. He adds: "This point has long been conceded by the mainstream thinkers in contemporary social science. See for example Berger 1963 and Runciman 1963)".

³⁴⁵ After Connolly on other terms such as genocide, fraud, overthrowing a legitimate government . Connolly W.E. *The Terms of Political Discourse*. (D.C.Heath. Toronto. 1974.). p27-29

³⁴⁶ Connolly W.E. *The Terms of Political Discourse*. (D.C.Heath. Toronto. 1974.). p29.

³⁴⁷ Sloan. S. 'International Terrorism: Academic Quest, Operational Art and Policy Implications' *Journal of International Affairs*. Vol. 32(1). 1978. p2. cited by Hocking J. 'Orthodox Theories of Terrorism': the Power of Politicised Terminology'. *Politics* (Sidney). Nov.1984. pp 103-110. p103.

³⁴⁸ Schmid A.P. and Jongman A.J. *Political Terrorism: A new guide to actions, authors, concepts and databases*. (SWIDOC. Amsterdam. 1988.). p1.

³⁴⁹ Gibbs J.P. 'Conceptualization of Terrorism'. *American Sociological Review*. Vol. 54. June. 1989. pp329-340. p329.

and policy preparation³⁵⁰. Without isolating terrorism from other forms of political violence, there can be no systematic observation³⁵¹, uniform data collection, effective analysis or responsible theory building on terrorism³⁵². Policy makers would therefore have difficulty in targeting resources effectively against the problem, especially in co-operation with other nations with whom discussions could be made at cross-purposes. Whilst the legal profession would be in danger of doing nothing, or doing too much, and by antagonising more people than they had hoped could create another problem for themselves.

Thus, this author has found reason enough to attempt to produce a definition of terrorism. It also seems necessary to construct the most 'apolitical' definition that is possible. It is in this light that this paper attempts to produce a definition of terrorism that allows the State (of whatever political hue) to be labelled terrorist, if it performs such actions in accordance with the requirements of the definition. That is, it aims to identify a definition that does not advance any particular political preference; that can identify an act of (State) terrorism occurring in any setting, regardless of the nature of the (political) motive, and against any target.

350 Wilkinson P. *Terrorism and the Liberal State*. (New York Press. New York. 1979.). p173. cited by Hoffman R.P. *Terrorism A Universal Definition* (Claremont Graduate School. Ph.D. 1984). p5

351 J. Hart in reply to question 13 of this author's questionnaire wrote "one might want to operationalize some notion of 'terrorism' for a particular social scientific study in order to make systematic observation possible".

352 Schmid A.P. and Jongman A.J. *Political Terrorism: A new guide to actions, authors, concepts and databases*. (SWIDOC. Amsterdam. 1988.). p3.

Producing A Definition Of 'Terrorism'

"Everyone knows what terrorism is - until they attempt to define it".

S. Segaller³⁵³.

Whilst this thesis takes the view that one can define the political concept 'terrorism', it must be noted that there are debates about the nature of any definition, and how one is produced. For example, Robinson in his book *Definition*, not only listed 12 of, what he described as, the most famous answers to the question: "What is the Definition of 'Definition'"³⁵⁴, but he also listed 18 "names for sorts of definitions"³⁵⁵. Whilst in an article entitled 'How to Define Terrorism', Teichman wrote there are three different ways in which we might try to reach an agreed and useful description or definition. The first was what she termed an "ordinary language definition"; the second being a "wide stipulative definition" and the third a "narrow stipulative definition"³⁵⁶. The type of definition which is to be produced here is what Robinson termed a "stipulative" definition. The main alternative to which is the straightforward dictionary or "lexical" definition. In explaining a preference for a stipulative, rather than a lexical, definition it is helpful to note Teichman who wrote:

"we ought to reject attempts to arrive at a definition based on (current) ordinary languageThe ordinary current use of the word *terrorism* is much too wide....What is more, the speakers and writers of ordinary language disagree among themselves about which phenomena should go on to the list"³⁵⁷.

Robinson went on to say by the term "stipulative definition" he meant "establishing or announcing or choosing one's own meaning for a word"³⁵⁸. Whilst Teichman fails to explain how one distinguishes

³⁵³ Segaller S. *Invisible Armies: Terrorism into the 1990s*. (Sphere Books. London. 1987). p11.

³⁵⁴ Robinson. R. *Definition* (Clarendon. Oxford. 1950.). p2-3.

³⁵⁵ Robinson. R. *Definition* (Clarendon. Oxford. 1950.). p7.

³⁵⁶ Teichman J. "How To Define Terrorism'. *Philosophy*. Vol. 64. 1989 p505-517. p505.

³⁵⁷ Teichman J. "How To Define Terrorism'. *Philosophy*. Vol. 64. 1989 p505-517. p505.

³⁵⁸ Robinson. R. *Definition* (Clarendon. Oxford. 1950.). p19.

between a narrow and wide stipulative definition, except to say that: "considerations of clarity, and the 'flavour' of the word, support a narrow definition"³⁵⁹. This author believes that his constitutes a narrow stipulative definition, but will leave this up to the reader to decide, because the main question is "Why do we stipulate?". Robinson replied to this question by saying that one stipulates when the primary purpose:

"is to establish the rule that a certain word signifies a certain thing....The most obvious advantage we may hope to gain by stipulation is the removal of an ambiguity and the avoidance of an inconvenience caused by the ambiguity....The greatest good to be obtained by stipulative definitions....is the improvement of concepts or the creation of new concepts"³⁶⁰.

The question then becomes: 'How does one go about producing a definition?', and as Berstein and Dyer noted in their introduction to political science methods, there are no firm rules to follow that will ensure clear definitions, nor are there tests that allow us to evaluate the clarity of definitions. Instead researchers must simply strive to maximise the communication which means they must use extreme care in defining the properties³⁶¹. Ponton and Gill, the authors of another general politics book are a little more useful. They claim that first we search for, and then try to understand, the meanings recognised authorities have given to the idea. Then we attempt to discover any 'core' meaning which has been ascribed to it by all, or most, authorities³⁶². In this way they are proposing to investigate lexical definitions before stipulating, and one can see this method in action when terrorologists investigated the etymology of the term³⁶³. Another useful set of suggestions is that made by Skubiszewski within an article specifically on the definition of terrorism. He noted that:

359 Teichman J. "How To Define Terrorism". *Philosophy*. Vol. 64. 1989 p505-517. p505.

360 Robinson. R. *Definition* (Clarendon. Oxford. 1950.). p66 and 68.

361 Berstein R.A. And Dyer J.A. *An Introduction to Political Science Methods*. (Prentice Hall. New Jersey.1984). p55.

362 Ponton G. and Gill P. *Introduction to Politics*. (Martin Robinson. Oxford. 1982.). p4

363 See for example comments made by Ezeldin A.G. *Terrorism and Political Violence: An Egyptian Perspective*. (University of Illinois. Chicago.1987.). p17-18.

"The very notion of "definition" has more than one meaning. First, there is the classical definition in the sense which that term has in logic: *definitio per genus et differentiam*. Here one would show the features that terrorism shares with a broader category of occurrences and those which form that category....However, even if one is successful in that task, the classical definition should be supplemented by the enumeration of various acts that constitute terrorism"³⁶⁴.

This study aims to satisfy both of Skubiszewski's demands. First it attempts to identify the features that terrorism shares with a broader category of occurrences and those which form that category. Secondly it then applies it, and other suggested definitions of state terrorism to various counter-terrorist activities of Israel. However this author is of the opinion that the identification of properties inherent within a 'stand-alone' concept is not enough, at least for the purpose of this thesis if not *per se*. For a definition of (state) terrorism to be useful it is necessary to explain the concept *vis-a-vis* other political concepts with which it is often confused. Or as Wilkinson put it:

"One must begin by attempting some conceptual clarification. How is terrorism to be defined?. What differentiates terrorism from other forms of organised violence?"³⁶⁵.

This method also seems to be accord with the requirements of Raymond Williams the author of the book *Keywords: A Vocabulary of Culture and Society* when he wrote, to: "apply any word to the world, we need to have a clear grasp of both its sense and its reference."³⁶⁶

Schmid also dwelt heavily on the question of definition within both of his research guides on the topic of political terrorism, and it is his methodology as described within his second research guide which was

³⁶⁴ Skubiszewski K. 'Definition of Terrorism'. *Israel Yearbook on Human Rights*. Vol. 19. 1987. pp39-54. p39.

³⁶⁵ Wilkinson P. 'Three Questions on Terrorism' *Government and Opposition* Vol.8 (3) Summer 1973. pp290-312. p291.

³⁶⁶ Williams R. *Keywords: A Vocabulary of Culture and Society* (London Fontana 1976) cited without page reference by Skinner Q. 'Language and Political Change' in T.Ball (ed) *Political Innovation and Conceptual Change* (Cambridge University Press. Cambridge. 1989.). pp6-23. p10.

written with Jongman. This author feels this is particularly useful. Here they wrote:

"A definition is basically an equation: an new, unknown or ill understood term (the definiendum) is described (defined) by a combination of at least two old, known, understandable terms (the definiens). The most primitive non-scientific definitions use only one element. They are not real definitions but synonyms, translations, tautologies or mere labels. Examples would be "terrorism = crime" or "terrorism = communism". Definitions with two or three elements are for instance "terrorism = political murder", "terrorism + violence for political purposes". As one adds more elements the definition becomes less ambiguous"³⁶⁷ .

Such noting of components, phenomena or essential elements within a definition of terrorism is a very popular methodology within the academic literature. For example in answer to his own question: "How can the concept of terrorism be delineated?", Townsend wrote:

"In the first place by emphasising (as Thornton and Walter did) the centrality of fear itself. Second by stressing the systematic nature of the fear-inducing violence used. Third, by insisting that the mark of terrorism as a method is its reliance on the sufficiency of the non-physical effects"³⁶⁸ .

Unfortunately this does not explain which elements should be included, nor how many should be included. Schmid himself concluded that there is no agreement in the field of terrorism about any single definition and he noted that authors within the 109 definitions he identified used on average eight elements³⁶⁹. However Schmid also noted there is: "considerable agreement about the main element which definitions should contain"³⁷⁰. According to Schmid these were the ten most frequently cited elements in the 109 definitions which were also and the ten most frequently mentioned elements in the definitions

³⁶⁷ Schmid A.P. and Jongman A.J. *Political Terrorism: A new guide to actions, authors, concepts and databases*. (SWIDOC. Amsterdam. 1988.). p6.

³⁶⁸ Townsend C. 'The Process of Terror in Irish Politics' in O'Sullivan N. (ed.) *Terrorism, Ideology and Revolution*. (Wheatsheaf Books. Brighton. 1986). p88-111. p91.

³⁶⁹ Schmid A.P. and Jongman A.J. *Political Terrorism: A new guide to actions, authors, concepts and databases*. (SWIDOC. Amsterdam. 1988.). p6.

³⁷⁰ Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature*. (North Holland. Amsterdam. 1984.). p110.

supplied in reply to his questionnaire in his list³⁷¹. The relevance of all of this is that even if one accepts these ten elements as the limit to the possible number of words that could conceivably be placed on the right hand side of the equation 'terrorism =' -and there is no definitive reason to do so³⁷² as many definitions do not fall within these parameters- a simple mathematical formula³⁷³ reveals why it is impossible for the author to produce a definition of terrorism by simply examining all of the potential options. Using just ten elements in this way, the number of potential answers to the question "terrorism=" would be 1023. Whilst if one were to examine all of the possibilities, when the number of elements was the full 22 found in Schmid's table, then the figure is extremely large at 4,194,303. After producing such an answer it is easy to agree with Hoffman, Ludwikowski and Thackrah's view that it is easier to identify what is not terrorism than to attempt to label exactly what is³⁷⁴ (although this author is not claiming that they were contemplating this problem, when they said this).

The problem then is that if there are so many potential definitions of terrorism that an examination of each is beyond the scope of this work, by what method is this thesis to try to produce its answer? The answer

371 Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature*. (North Holland. Amsterdam. 1984.). p110.

372 Schmid and Jongman wrote 'The question is whether the above list contains all the elements necessary for a good definition. The answer is probably: "No". Some elements overlap, while others might be missing. The more popular elements might not be the most important ones. How can we know?'. Schmid A.P. and Jongman A.J. *Political Terrorism: A new guide to actions, authors, concepts and databases*. (SWIDOC. Amsterdam. 1988.).p4.

373 The figure is that which is gained after working out all of the various permutations using 10 different variables. It is easy to see how this large final result came about using only three elements (a,b,c) rather than 10 or 22 variables. If there were only three potential variables the number of potential answers to the question "terrorism =" would be 7, that is a, ab, ac, abc, b, bc, c. Here the author uses the formula and results kindly provided by Ms. Lorraine Howe, teacher of Mathematics. That is one can form groups of r objects from n in ${}^nC_r = \frac{n!}{(n-r)!r!}$ ways (! means factorial).

374 Thackrah wrote, "[i]t is easier to identify that which is not terror than attempt to label exactly that which is". Thackrah J.R. *The Encyclopedia of Terrorism and Political Violence*. (Routledge, Kegan and Paul. London. 1987.). p58. Hoffman in the last sentence to his thesis on the topic of defining the term terrorism wrote, "[i]n conclusion the observation may be offered that it is often easier to identify that which is not terrorism than to attempt to label exactly that which is". Hoffman R.P. *Terrorism A Universal Definition* (Claremont Graduate School. Ph.D. 1984). p197. Ludwikowski wrote, "instead of looking for a trivial, one sentence-long description of this complicated phenomenon we should consider "what is not" terrorism". Ludwikowski R.R. 'Aspects of Terrorism: Personal Reflections'. *Terrorism: An International Journal*. Vol.10(3). 1987. pp175-184. p182

is to try to identify a core meaning to the notion of sub-state terrorism (and other concepts which are not terrorism but which it is often confused or associated) by examining each of the 22 elements (or *definiens*) contained within the 109 definitions collated by Schmid, and to ask questions of them, before attempting to incorporate any core meaning into a definition of state terrorism. So whilst this method does not guarantee the correct answer, it provides a solid foundation from which to start an investigation. The 22 'elements' used by academics³⁷⁵ are:

³⁷⁵ Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature*. (North Holland. Amsterdam. 1984.). p76-77. Table V entitled "Frequencies of Definitional Elements".

Frequencies of Definitional Elements in 109 Definitions

1. Violence, force	83.5 %
2. Political	65 %
3. Fear, terror emphasised	51 %
4. Threat	47 %
5. (Psych.) effects and (anticipated) reactions	41.5 %
6. Victim-target differentiation	37.5 %
7. Purposive, planned, systematic, organised action	32 %
8. Method of combat, strategy, tactic	30.5 %
9. Extranormality, in breach of accepted rules without humanitarian constraints	30 %
10. Coercion, extortion, induction of compliance	28 %
11. Publicity aspect	21.5 %
12. Arbitrariness; impersonal, random character; indiscrimination	21 %
13. Civilians, non-combatants, neutrals, outsiders as victims	17.5 %
14. Intimidation	17 %
15. Innocence of victims emphasised	15.5 %
16. Group, movement, organisation as perpetrator	14 %
17. Symbolic aspect, demonstration to others	13.5 %
18. Incalculability, unpredictability, unexpectedness of occurrence of violence	9 %
19. Clandestine, covert nature	9 %
20. Repetitiveness; serial or campaign character of violence	7 %
21. Criminal	6 %
22. Demands made on third parties	4 %

In addition to defining an act of terrorism, before incorporating it with the notion of the State, it is hoped that this sieve-like process of elimination will simultaneously distinguish terrorism (including state terrorism) from the other political concepts with which it is often associated such as war, guerrilla warfare, war crimes, riots, assassination and genocide, and the violence that is used to enforce the (non-terrorist) law.

Finally it is worth noting that is necessary to avoid qualifying terms, 'often', 'mainly', 'generally', and 'usually' which are often attached to the term for such qualifiers allow for the injection of personal views in deciding whether a particular act is or is not 'terrorist'³⁷⁶.

The first ingredient into the sieving process is that factor of 'crime', which was one of the 22 elements noted by authors in Schmid's analysis of 109 definitions. Although it was mentioned in only 6% of the definitions recorded by Schmid, it is examined here at the start because it constitutes the foundation of many works on the topic, even if many of the terrorologists are not aware of this. Therefore rather than solely and immediately asking "Does terrorism= crime", and examining terrorism's relationship to this element (as will occur with many of the elements), this thesis will first of all examine existing legal attempts to define terrorism, in order to show why this author prefers the analytical approach to the 'legalistic' approach, which according to Ezeldin, constitutes its main alternative³⁷⁷.

³⁷⁶ Thackrah J.R. *The Encyclopedia of Terrorism and Political Violence*. (Routledge, Kegan and Paul. London. 1987.). p54-55. An example of such a definition is that of the U.S. State Department, which reads; "The term "terrorism" means premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents, usually intended to influence an audience". U.S. State Department. *Patterns of Global Terrorism: 1993*. (Department of State Publication 10136, Office of the Secretary Office of the Coordinator for Counterterrorism.)

³⁷⁷ Ezeldin A.G. *Terrorism and Political Violence: An Egyptian Perspective*. (University of Illinois. Chicago.1987.). p19, 21.

A Legalistic Approach.

This section attempts to constitute the 'legalistic' approach to identifying the concept of terrorism (including that committed by the State) noted in the previous chapter by Ezeldin, and to provide a basis for examining the question "Does terrorism =crime?". This section therefore examines national, bilateral and international attempts to produce legislation to 'counter-terrorism', before examining the definitions of those author's who suggest that a definition of state terrorism which incorporates a particular piece of international law.

National Legal Attempts to Counter - Terrorism.

Although numerous nation-states have produced legislation to counter acts of terrorism, it is almost impossible for this author to acquire all the criminal statutes of the existing 180 or so nation-states in order to examine all references to the term 'terrorism'. Instead this chapter has to rely upon secondary sources in order to identify national legal references to the term. Given the nature of municipal law and the way in which it is produced it is not surprising that the secondary literature read by this author does not contain a reference to any nation producing a crime of 'state terrorism'. However a few states have adopted specific legislation to counter what they term 'terrorism', although most states prosecute those who could be described as 'terrorists' under existing statutes which cover the offences of murder, kidnapping or explosives etc.³⁷⁸. Even those "exceptions to the norm" as Murphy calls those States which have adopted specific 'anti-terrorist' statutes, do not always define the term 'terrorism' within their legislation³⁷⁹. For example in 1975, Pakistan adopted legislation directed towards the "suppression of terrorist activities" which did not define the

³⁷⁸ Murphy J.F. 'Defining international terrorism: A Way Out Of The Quagmire'. *Israel Yearbook of Human Rights*. Vol. 19. 1989. pp13-37. p23.

³⁷⁹ Murphy J.F. 'Defining international terrorism: A Way Out Of The Quagmire'. *Israel Yearbook of Human Rights*. Vol. 19. 1989. pp13-37. p23.

term³⁸⁰. Instead many countries which have introduced special counter-terrorist legislation have merely outlawed specific groups or particular acts which reflect the form of their terrorist problem. Israel's Prevention of Terrorism Ordinance for example, fails to define the term -although it is possible to derive one from its definition of a terrorist organisation³⁸¹. The ordinance automatically proscribes as terrorists any group whose members commit acts of violence, in addition to allowing the government to proscribe any organisation³⁸².

Finally, even in the few cases where the national legislation does produce a definition of the term 'terrorism' within the counter-terrorist legislation they are often very questionable because they merely reflect the nature and form of that particular political problem which their legislators faced. An obvious example of this is *apartheid* South Africa's Internal Security act of 1982, which stated that:

"(1) Any person who with intent to-

- (a) overthrow or endanger the State authority in the Republic;
 - (b) achieve, bring about or promote any constitutional , political , industrial, social aim or change in the Republic;
 - (c) induce the Government of the Republic to do or to abstain from doing any act or to adopt or to abandon a particular standpoint; or
 - (d) put in fear or demoralise the general public, a particular population group or the inhabitants of a particular area in the Republic, or induce the said public or such population group or inhabitants to do or to abstain from doing any act, in the Republic or elsewhere-
- (i) commits an act of violence or threatens or attempts to do so;
 - (ii) performs any act which is aimed at causing, bringing about, promoting or contributing towards such act or threat of violence, or attempts, consents or takes any steps to perform such act;

380 Suppression of Terrorist Activities (Special Courts) Act 1975. Se. 54(1) in Alexander Y. and Nanes A. (eds.). *Legislative Responses to Terrorism*. 1986 p155 cited by Murphy J.F. 'Defining International Terrorism: A Way Out Of The Quagmire'. *Israel Yearbook of Human Rights*. Vol. 19. 1989. pp13-37. p24.

381 Israel's Prevention of Terrorism Ordinance of 1948 declares that "'Terrorist organisation" means a body of persons resorting in its activities to acts of violence calculated to cause death or injury to a person or threats of such acts of violence".

382 Section 7 automatically proscribes as terrorists any group whose members commit acts of violence. Section 8 allows the Government to identify and proscribe specific organisations.

(iii) conspires with any other person to commit, bring about or perform any act or threat referred to in paragraph (i) or any act referred to in paragraph (ii), or to aid in the commission, bringing about or performance thereof; or

(iv) incites, instigates, commands, aids, advises, encourages or procures any person to commit, bring about or perform such act or threat, *shall be guilty of the offence of terrorism* and liable on conviction to the penalties provided for by law for the offence of treason."³⁸³

Another example of this method is provided by the 'all embracing' definition contained within both the UK's Prevention of Terrorism Act and the Northern Ireland Emergency Provisions Act. A definition which is equally applicable to the State's threat or use of violence to uphold its counter-terrorist laws. For within these two pieces of legislation the term 'terrorism' means:

"the use of violence for political ends, and includes any use of violence for the purpose of putting the public or any section of the public in fear" ³⁸⁴.

Generally speaking the attempts of national legal entities to produce counter-terrorist legislation contribute little to the quest for a definition of terrorism or state terrorism. The main reason for this is that a nation's politicians are primarily interested in producing a stipulative definition which solves the particular political problem which they face. As a result counter-terrorist legislation does not need to concern itself with the nuances of an universally applicable academic definition (indeed it does not even need to produce a definition of terrorism). Instead the State usually labels as terrorism the actions, organisations and sometimes even aims, of those who it perceives as a threat in order to deal with this de-legitimised enemy within.

³⁸³ Internal Security Act 1982 54(1) in Alexander Y. and Nanes A. (eds.). *Legislative Responses to Terrorism*. 1986 p189, 202 cited by Murphy J.F. 'Defining International Terrorism: A Way Out Of The Quagmire'. *Israel Yearbook of Human Rights*. Vol. 19. 1989. pp13-37.p24. [My emphasis].

³⁸⁴ Section 9(1) of the Prevention of Terrorism (Temporary Provisions) Act 1974. Section 28(1) of Northern Ireland Emergency Provisions Act 1973.

Bilateral and Regional Legal Treaties.

Following the examination of the national counter-terrorist legislation Murphy's conclusion that "[n]o bilateral agreement contains a definition of international terrorism"³⁸⁵ is hardly unexpected. Nor is it a surprise that neither of the three existing regional conventions to combat international terrorism have attempted to define the term³⁸⁶. Likewise neither a bi-lateral or regional agreement has yet to produce a crime of 'state terrorism'. Instead the regional conventions produced by the Organisation of American States and the Council of Europe - 'The Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that Are of International Significance' and 'The European Convention on the Suppression of Terrorism' - merely list a series of crimes that state parties are to exclude from the political offence exception to their extradition treaties between themselves³⁸⁷. Whilst the other regional agreement - 'The Agreement Concerning the Application of the European Convention on the Suppression of Terrorism among the Member States' - is, as its title suggests, simply a mechanism for promoting the application of the European Convention within the European Union as this regional body is now called³⁸⁸.

Within the E.U. itself, the inter-governmental TREVI (Terrorism, Radicalism, Extremism and Political Violence) group did produce a

³⁸⁵ Murphy J.F. 'Defining International Terrorism: A Way Out Of The Quagmire'. *Israel Yearbook of Human Rights*. Vol. 19. 1989. pp13-37. p22. So although numerous nations states have produced legislation to counter acts of terrorism, include some which defines the term, it is impossible for this author to examine each of the definitions produced for a number of reasons. The first is that this author has to rely upon secondary sources in order to identify such examples, the alternative which is to acquiring all the criminal statutes of the existing 180 or so nation states in order to identify any reference to the term 'terrorism' is far too long and complicated for this thesis.

³⁸⁶ The Convention of Prevent and Punish the Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that Are of International Significance (2 February 1971); European Convention on the Suppression of Terroism (27 January 1977); Agreement Concerning the Application of the European Convention on the Suppression of Terrorism among the Member States (4 December 1979) respectfully .

³⁸⁷ Murphy J.F. 'Defining International Terrorism: A Way Out Of The Quagmire'. *Israel Yearbook of Human Rights*. Vol. 19. 1989. pp13-37. p20-21.

³⁸⁸ Murphy J.F. 'Defining International Terrorism: A Way Out Of The Quagmire'. *Israel Yearbook of Human Rights*. Vol. 19. 1989. pp13-37. p21

definition for their own workings, although not strictly speaking a legally enforceable one. TREVI defined terrorism as the use, or the threatened use, by a cohesive group of persons of violence (short of warfare) to effect political aims³⁸⁹. Presumably TREVI does not consider states to constitute "cohesive groups of individuals", otherwise it would have to consider the use of violence by its constituent states to enforce their laws the acts of terrorism.

International Legal Attempts to Define Terrorism.

In contrast to some national attempts, 'international public law' has failed to produce either specific counter-terrorism legislation never mind a definition of what constitutes (international) terrorism'. Indeed it has been argued that the international organisation known as the United Nations has yet to produce any international law which legitimises a states use of violence in response to international terrorism. A view which will be examined later.

At first glance such claims are a little surprising given both the history of attempts to deal with the problem of international terrorism, and the fact there has been more international legislation produced since the second world war than in the rest of recorded history. Yet on reflection the conclusions are hardly surprising given the 'inter-national' nature of its production process. However what this author does find surprising is the fact that the issue of 'state terrorism' was actually raised within an international organisation. It is primarily for this reason as well as the fact that it might produce useful insights into a definition of insurgency terrorism, that this thesis proceeds to give a detailed examination of the debates on international terrorism that took place within the League of Nations and United Nations.

International Organisations And Terrorism: A History

³⁸⁹ Schmid cites Handelingen (Dutch Parliamentary Proceedings) I, 1986/87, Bilagen 19700, Hoofdstuk VI nr.30, p5 as cited in Peter Klerks, *Terruer Bestrijding in Nederland 1970-1988* (Amsterdam: Ravijn, 1989.). p22. Schmid A.P. 'The Response Problem as a Definition Problem' in Schmid A.P. and Crelinsten R.C. (ed.). *Western Responses to Terrorism*. (Frank Cass. London. 1993.). pp7-13. p9.

Attempts by global legal entities to produce legislation to combat terrorism can be traced as far back as the inter-war years, during which a number of International Conferences for the Unification of Penal Law were held under League of Nations auspices. It was at the Third (Brussels) International Conference for the Unification of Penal Law (26-30 June 1930) that the term 'terrorism' was used for the first time in an international penal instrument to refer to the activities of individuals³⁹⁰. However neither a convention, nor any other binding steps were taken at the conference³⁹¹.

Four years later the Council of the League of Nations resolved that states had a duty not to encourage or tolerate terrorist activity in their territory which was directed against other States³⁹². More importantly 1934 also saw the assassinations of King Alexander of Yugoslavia and the French foreign minister Barthou in Marseilles on October 9th. These killings can be seen as the catalyst for the successful production of two international covenants relating to terrorism. Following the killings, the League of Nations established a committee of experts to produce a draft convention to repress such 'crimes', and as a result of the progress it made in its three sessions between 1935 and 1938, the League sponsored a conference on terrorism at Geneva in November 1935³⁹³. Here two new pieces of legislation on the issue were produced and made available to signatories. The first was 'The Convention on the Prevention and Punishment of Terrorism' which was directed mainly at crimes against heads of state and other public officials. It also required participating states to prevent and punish acts of terrorism which were defined as:

390 Franck T. and Lockwood B. 'Preliminary Thoughts Towards an International Convention on Terrorism' *American Journal of International Law* Vol. 68. p69, 73 n 23 1974. Cited by Murphy J.F. 'Defining International Terrorism: A Way Out Of The Quagmire'. *Israel Yearbook of Human Rights*. Vol. 19. 1989. pp13-37. p14-15.

391 Lambert J.L. *Terrorism and Hostages in International Law*. (Grotius Publications Cambridge.1990.). p28.

392 Lambert cites the League of Nations Official Journal 1839. Lambert J.L. *Terrorism and Hostages in International Law*. (Grotius Publications Cambridge.1990.). Ftn82. p29.

393 Finger S.M. 'International Terrorism and The United Nations' in Alexander Y (ed.). *International Terrorism: National, Regional and Global Perspectives*. (Praeger. New York. 1976.).pp 323-348. p323.

"criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons, or a group of persons, or the general public"³⁹⁴.

The second piece of legislation was the accompanying 'Convention on the Establishment of an International Criminal Court'. It specifically obliged signatory states to prosecute those who committed such acts which fell within the meaning of this definition. Such acts included *inter alia* attacks on the lives of and physical integrity of heads of State and other public officials, destruction of public property, and acts calculated to endanger the lives of the members of the public³⁹⁵. However whilst the 'Convention on the Prevention and Punishment of Terrorism' gained more than 24 signatories, it was ratified by only one country and therefore never came into force as a piece of international legislation³⁹⁶. The reasons suggested as to why the signatory states failed to ratify the Convention, include a lack of agreement on the definition of terrorism, its over ambitious scope and the tense international atmosphere prior to the outbreak of World War II.³⁹⁷

³⁹⁴ Lambert cites L.N.Doc. C.546(1).M.383(1). 1937.V. reprinted in Hudson ed. *International Legislation* Vol. VII. 862 (1941). Lambert J.L. *Terrorism and Hostages in International Law*. (Grotius Publications Cambridge.1990.). p29.

³⁹⁵ Lambert cites Hudson generally and L.N.Doc. C.546(1).M.383(1). 1937.V. reprinted in Hudson ed. *International Legislation* Vol. VII. 862 (1941). p862 Lambert J.L. *Terrorism and Hostages in International Law*. (Grotius Publications Cambridge.1990.).p29.

³⁹⁶ Falvey cites Walters F. *A History of the League of Nations* 1952. p20 Falvey A. 'Legislative Responses to International Terrorism: International and National Efforts to Deter and Punish Terrorists'. *Boston College International and Comparative Law Review*. Vol 9.(2) 1986. pp323-359. p326. and Finger S.M. 'International Terrorism and The United Nations' in Alexander Y (ed.). *International Terrorism: National, Regional and Global Perspectives*. (Praeger. New York. 1976.).pp 323-348. p323.

³⁹⁷ Lambert cites Wardlaw G. *Political Terrorism: Theory, Tactics and Countermeasures*. (Cambridge Univ.Press. Cambridge. 1982.). p105, and Zlataric, 'History of International Terrorism', in Bassouni (ed.) *International Terrorism and Political Crimes*, p478-480(1975).p482. Lambert J.L. *Terrorism and Hostages in International Law*. (Grotius Publications Cambridge.1990.). p29.

The United Nations Legislative Attempts to Combat International Terrorism.

In the first twenty years of the existence as the League's successor, the United Nations paid only incidental attention to the issue of terrorism. In 1954 its International Law Commission produced a draft 'Code of Offences Against the Peace and Security of Mankind', which repeated the League's condemnation of encouraging and tolerating terrorism³⁹⁸. Article 2(6) labelled as an offence against the peace and security of mankind:

"the undertaking or encouragement by the authorities of a State of terrorist activities in another State, or the toleration by the authorities of a State of organized activities calculated to carry out terrorist acts in another State"³⁹⁹.

The Code however remained unfinished as the General Assembly set up a Special Committee on the Question of Defining Aggression⁴⁰⁰. The subsequent General Assembly 'Resolution on the Definition of Aggression' (3314 (XXIX) of 14 Dec. 1974) did not specifically mention the word 'terrorism', but in articles 3 (f) and (g) it condemned the involvement of states with armed bands, groups, irregulars and mercenaries carrying out such acts of force in other states. In between the publication of these two documents the U.N. General Assembly passed the 'Declaration on Principles of International Law Concerning Friendly Relations And Co-operation Among States in Accordance with the Charter of the United Nations'.((2625) XXV Oct. 24. 1970). It had demanded that:

398 Finger S.M. 'International Terrorism and The United Nations' in Alexander Y (ed.). *International Terrorism: National, Regional and Global Perspectives*. (Praeger. New York. 1976.).pp 323-348. p324.

399 UNGA report of the International Law Commission on the work of its Sixth session. Supplement 2 (A/2693) cited by Finger S.M. 'International Terrorism and The United Nations' in Alexander Y (ed.). *International Terrorism: National, Regional and Global Perspectives*. (Praeger. New York. 1976.).pp 323-348. p324.

400 Finger S.M. 'International Terrorism and The United Nations' in Alexander Y (ed.). *International Terrorism: National, Regional and Global Perspectives*. (Praeger. New York. 1976.).pp 323-348. p324.

"no State shall organise, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed toward the violent overthrow of the regime of another State"

The work on the Draft Code resumed following the General Assembly's adoption of the Definition of Aggression, but it has yet to be finished. In 1972 however the United Nations made its most deliberate attempt to address the problem of terrorism. Following the Munich Massacre of Israeli athletes at the Olympic village, the then Secretary General Kurt Waldheim took the unusual step of proposing to the General Committee of the General Assembly that the latter body should consider:

"Measures to prevent terrorism and other forms of violence which endanger or take innocent human lives and jeopardise fundamental freedoms".

It was within the General Committee's discussions on the agenda for the debate at the General Assembly, that the notion of state terrorism was first raised. According to Finger, the term was used to refer to the suppression of colonial peoples by force and was described as a far more noxious form of terrorism than that carried out by individuals and guerrilla groups, and more costly in lives⁴⁰¹. From now on the issue of state terrorism would play a crucial role in contributing to the failure of the United Nations to produce any legislation to counter-terrorism⁴⁰².

After much discussion and debate Waldheim's original proposal was accepted, and the issue was placed on the agenda of U.N. General Assembly. Here an amendment was passed and added to the end of it, which according to the chair of the UN Sixth Committee at the 27th session, had the effect, if not the intention, of preventing concrete measures being adopted⁴⁰³. The proposal which was passed to the

⁴⁰¹ Finger S.M. 'International Terrorism and The United Nations' in Alexander Y (ed.). *International Terrorism: National, Regional and Global Perspectives*. (Praeger. New York. 1976.).pp 323-348. p330.

⁴⁰² For example in the 1977 discussions of the *Ad-Hoc* Committee, the U.S. representative is summarised as having said that the third obstacle to progress in eliminating international terrorism is the decision to include those who terrorized others through repressive policies. *Report of the Ad-Hoc Committee on International Terrorism*. GA 32 Sess. Supplement no.37 A. 32/37. 1977. para. 23. p24.

⁴⁰³ Erik Suy. *Reflexions sur la Definition et la Repression du Terrorisme*. (Bruxelles. Edition de l'University de Bruxelles. 1974,)p194-6 cited by Finger S.M. 'International

General Assembly's Sixth (legal) Committee, and a 35 nation Ad-Hoc Committee set up especially by the General Assembly to deal with the issue, now read:

"Measures to prevent terrorism and other forms of violence which endanger or take innocent human lives and jeopardise fundamental freedoms and study of the underlying causes of those forms of terrorism and acts of violence which live in misery, frustration grievance and despair and which cause some people to sacrifice human lives, including their own and in an attempt to effect radical change" (my emphasis)

However before its appearance before Ad-Hoc Committee, the (legal) Sixth Committee considered the issue and yet again the notion of state terrorism was raised. In its report the Sixth Committee condemned the:

"continuation of repressive and terrorist acts by colonial racist and alien régimes in denying peoples their legitimate right to self-determination and independence and other human rights and fundamental freedoms"⁴⁰⁴.

Such a definition, if one can call it that, is far too broad to be used in any definition of state terrorism for it labels *any* action against those fight for self-determination as state terrorism. However the issue does not end there for this was not the only time the idea was mentioned. Another precise, yet still far too broad notion of terrorism being carried out by the State could also be deduced from an amendment put forward by Lesotho which declared:

"that the use or threat of violence by individuals, organisations in or organs of the State against the innocent citizens or persons of other States or their property

Terrorism and The United Nations' in Alexander Y (ed.). *International Terrorism: National, Regional and Global Perspectives*. (Praeger. New York. 1976.).pp 323-348. p331.

⁴⁰⁴ *Report of the Sixth Committee* UN Doc A/8969 27 Sess. 1972 Entitled, "Measures to prevent terrorism and other forms of violence which endanger or take innocent human lives and jeopardise fundamental freedoms and study of the underlying causes of those forms of terrorism and acts of violence which live in misery, frustration grievance and despair and which cause some people to sacrifice human lives, including their own and in an attempt to effect radical change". para. 20.4. p16.

either for securing political objectives or for purposes of extortion constitutes International Terrorism"⁴⁰⁵.

In addition to debating the issue within the Sixth Committee, U.N. members were requested to transmit observations on the matter to the General Secretary whose study was in turn provided to the Ad-Hoc Committee. One of the 34 replies received by the Secretary-General had been produced by Syria. In a rather descriptive reply Syria noted that :

"official terrorism...contains the most drastic form of savagery and barbarism and the greatest dangers threatening the security and safety of peoples. Any consideration that evades coming face to face with terrorism practised by the State, as the real source of violence, blackmail, domination and illegitimate exploitation, would defeat the very purposes and objectives of the Charter it intends to defend"⁴⁰⁶

In contrast, other representatives pointed out that the Declaration on Friendly Relations amply covered interstate violence, and acts committed by armed forces during military operations were already the subject of extensive treaty law and were being considered in the context of the protection of human rights in armed conflicts⁴⁰⁷.

The Ad-Hoc Committee met in 1973, and after an initial debate, split into three sub- committees in order to facilitate its work. These were The Sub-Committee of the Whole on the Definition of International Terrorism, The Sub-Committee of the Whole on the Underlying Causes of International Terrorism, and The Sub-Committee of the Whole on the

⁴⁰⁵ *Report of the Sixth Committee* UN Doc A/8969 27 Sess. 1972. Entitled "Measures to prevent terrorism and other forms of violence which endanger or take innocent human lives and jeopardise fundamental freedoms and study of the underlying causes of those forms of terrorism and acts of violence which live in misery, frustration grievance and despair and which cause some people to sacrifice human lives, including their own and in an attempt to effect radical change". para. 15.4. p11.

⁴⁰⁶ See A/AC.60/2. (June 22. 1973.) Cited by Finger S.M. 'International Terrorism and The United Nations' in Alexander Y (ed.). *International Terrorism: National, Regional and Global Perspectives*. (Praeger. New York. 1976.). pp 323-348. p334.

⁴⁰⁷ Finger S.M. 'International Terrorism and The United Nations' in Alexander Y (ed.). *International Terrorism: National, Regional and Global Perspectives*. (Praeger. New York. 1976.).pp 323-348.p334. Unfortunately Finger does not specifically name these representatives.

Measures for the Prevention of International Terrorism⁴⁰⁸. Despite the split each of sub-committees remained deadlocked and unable to come to any meaningful consensus. Ironically each was plagued by the same issue which had prevented the whole of the Ad-Hoc Committee from producing a definition in the first place, and which would ensure that all of the U.N.'s attempt to produce a piece of international legislation specifically designed to combat terrorism would fail.

For example within the Sub-Committee of the Whole on the Definition of International Terrorism, there was disarray as to both the necessity of producing a single definition never mind the content of it. Similarly differences also emerged in the sub-committees studying the underlying causes of terrorism, and in that dealing with the preventative measures to be taken. Many developing States argued that a study of the underlying causes of international terrorism -that is the pursuit by certain countries of colonialism, occupation, racism, *apartheid* domination and exploitation as well as poverty and the lack of political participation- should be the starting point of the U.N.'s treatment of the problem⁴⁰⁹. The implication being that such state terrorism was the worst type of terrorism, and that it lead to sub-state terrorism which would itself disappear when state terrorism its underlying cause, ended⁴¹⁰.

Also of interest to this section is the fact that Algeria is recorded as having made a rather vague suggestion as to what form state terrorism took during the sitting of The Sub-committee of the Whole on the Underlying Causes of International Terrorism. According to Algeria, state terrorism the form of mass imprisonments, the use of torture, the massacre of whole groups, widespread reprisals, the bombing of civilian population, the use of defoliants, the destruction of the economic structures of a country etc.⁴¹¹ Although like all the proposed

408 Baxter R.R. 'A Skeptical Look at the Concept of Terrorism'. *Akron Law Review*. Vol.7 (3).1974. pp380-387.

409 Lambert J.L. *Terrorism and Hostages in International Law*. (Grotius Publications Cambridge.1990.). p38.

410 *Report of the Ad-Hoc Committee on International Terrorism* UN GOAR, 28th Sess. Supp. 28, para 49, 54 and 62-63 cited by Lambert J.L. *Terrorism and Hostages in International Law*. (Grotius Publications Cambridge. 1990.). p38.

411 Algeria to the Sub-committee of the Whole on the Underlying Causes of international Terrorism. *Report of the Ad-Hoc Committee on International Terrorism*. UNGAOR 28th Sess. Supp. 28. 1973. UN Doc. A/9028 Paragraph 24.

'definitions' of international terrorism, this was not accepted by the U.N. body discussing it.

The main issue which prevented the production of a consensus in all of the U.N. debates on international terrorism was that of (anti-) colonialism or self-determination. Many, though by no means all third world nations and former colonies, often backed by the Soviet bloc, argued that 'colonialist' or 'imperialist' states were the major terrorists in the world. They therefore insisted that the U.N. focus on official 'reigns of terror' rather than 'sieges of terror', and that it exclude the activities of 'national liberation movements'. In contrast various western nations argued that certain acts should be regarded as illegitimate regardless of the (anti-colonialist) cause of the perpetrator. At the heart of the matter was the fact that many third world leaders, many of whom had themselves gained independence for their nations through armed struggle, were sympathetic to groups fighting for their own national liberation against colonial states. They saw the attempts by western nations to label particular types of acts as 'terrorism' regardless of the nature of the cause either as an attempt to weaken those seeking to free themselves from the colonialist's oppression⁴¹², or as an attempt to divert attention from the 'real' terrorism of the colonial powers. For these representatives, violence should be seen in the context of the anti-colonialist cause, or of the individual case in which the liberation movements were usually far worse off both militarily and financially than their oppressors.

In the end the Ad-Hoc Committee could do no more than submit a report on its proceeding to the General Assembly stating that there was a "diversity of existing views"⁴¹³. Thus, the only real agreement reached was the recognition that terrorism by the other side was morally

⁴¹² For example within the Sixth Committee the representative of China claimed that the effect of the attempt to focus upon acts such as hijacking and hostage taking was a pretext to oppose national liberation. UN GAOR 31 Sess. C.6.(58mtg.) paras 26-27 UNDoc A/C.6/31/SR58(1976). Cited by Lambert J.L. *Terrorism and Hostages in International Law*. (Grotius Publications Cambridge.1990.). p30.

⁴¹³ *Report of the Ad-Hoc Committee on International Terrorism* UN GOAR, 28th Sess. Supp. 28, para 24-25, 38, 64, 68. UN. Doc. A/9028 (1973) cited by Lambert J.L. *Terrorism and Hostages in International Law*. (Grotius Publications Cambridge.1990.) p39.

wrong⁴¹⁴. Following the failure of the Ad-Hoc Committee to reach any sort of consensus the issue was deferred for a number of years, before being revived on a number of occasions only to face the same diversity of views. In its 1977 meeting for example the issue was raised by various countries including Syria, Tunisia and Greece⁴¹⁵ and even the United Kingdom is reported to have said:

"The existence of state terrorism required the protection of life, liberty and security of persons against servitude, torture and inhuman punishment or treatment, and arbitrary arrest"⁴¹⁶.

This description can be seen as giving a little more detail to the claims by those who argued that state terrorism had long been the concern of the instruments and mechanisms which have been adopted by the U.N. to protect fundamental human rights and freedoms⁴¹⁷. In contrast however Algeria considered that state terrorism included the acts of countries following a policy of expansion and hegemony, of those practising racial discrimination, *apartheid* and colonial domination, of those exploiting the natural resources of a country or systematically destroying the vegetation, population or economic or transport structure of a country, and of those using armed intervention against another state, under conditions that did not conform to the definition of a state of war in international law⁴¹⁸.

414 Nef J. 'Some Thoughts on contemporary Terrorism: Domestic and International' in Carson J. *Terrorism in Theory and Practice* (Atlantic Council of Canada. Toronto. 1978.).pp3-31. p9. cited by Sproat P.A. 'Can The State Be Terrorist?' *Terrorism: An International Journal*. Vol. 14.(1). Jan-Mar 1991. pp19-29. p20.

415 Syria associated it with foreign and colonial regimes, (p 29); Tunisia with Palestine, Rhodesia and South Africa (p. 32); and Greece mentioned state terrorism in para. 24.p32/33. *Report of the Ad Hoc Committee on International Terrorism*. GA.32nd Sess. Supp. 37. A(32/37) 1977.

416 *Report of the Ad Hoc Committee on International Terrorism*. GA.32nd Sess. Supp. 37. A(32/37) 1977. Para.29. p34.

417 This observation was made in the concluding statement of the *Report of the Ad Hoc Committee on International Terrorism*. GA.32nd Sess. Supp. 37. A(32/37) 1977. Para. 2. Also the 1977 discussions of the Ad-Hoc Committee, in which the U.S. representative is summarised as having said that the third obstacle to progress in eliminating international terrorism is the decision to include those who terrorized others through repressive policies. *Report of the Ad-Hoc Committee on International Terrorism*. GA 32 Sess. Supplement no.37 A. 32/37. 1977. para. 23. p24.

418 *Report of the Ad Hoc Committee on International Terrorism*. GA.32nd Sess. Supp. 37. A(32/37) 1977. para. 74. p46.

The recommendations of the Ad-Hoc Committee were taken on board by the General Assembly in resolution 34/145 of 17 December 1979, which unequivocally condemned all acts of international terrorism which endanger or take human lives or jeopardise fundamental freedoms - the first such condemnation of political acts of terrorism by the General Assembly⁴¹⁹. Yet in terms of the specific issue at hand the 1979 resolution still condemned:

"the continuation of repressive and terrorist acts by colonial, racist and alien regimes in denying peoples their legitimate right to self-determination and independence and other human rights and state terrorism"⁴²⁰.

Since then various General Assembly resolutions have been passed which condone anti-colonial terrorism⁴²¹. However two years later a similarly entitled General Assembly Resolution on the issue did not specifically mention the idea of terrorism by states, neither did the Report of the Sixth Committee in this year. The notion of state terrorism

419 Cited by Lambert J.L. *Terrorism and Hostages in International Law*. (Grotius Publications Cambridge.1990.). p41.

420 Point 4 of UN GA Resolution 34/145 (1979) Entitled "Measures to prevent terrorism and other forms of violence which endanger or take innocent human lives and jeopardise fundamental freedoms and study of the underlying causes of those forms of terrorism and acts of violence which live in misery, frustration grievance and despair and which cause some people to sacrifice human lives, including their own and in an attempt to effect radical change" As compiled by Elagab O.Y. *International Law Documents Relating to Terrorism*. (Cavendish Publishing. London. 1995.). p26-27. p27.

421 Just as it has it has been accused of creating and legitimising a new just war (or at best for creating this impression through its deliberate use of ambiguous language), the U.N. can be accused of promoting (if not actually legitimising) the idea that those attempting to achieve their goal of self determination may utilise "all necessary means" at their disposal including armed force. For example Resolution 2708 (XXV) of 14 December 1970 which justified "by all means at their disposal" Wilson H.A. *International Law and The Use of Force by National Liberation Movements* (Oxford. Clarendon Press. 1988) p97. Authors who believe that the U.N. had legitimised the use of terrorism by national liberation movements include Asmal K. 'Apartheid and Terrorism-The Case of South Africa' pp129-158 and Ate B.E. "Terrorism in the Context of Decolonization" pp 79-96 both within H.Köchler (Ed) *Terrorism and National Liberation* (Frankfurt. Verlag Peter Lang. 1988) and Friedlander R.A. 'Terrorism and National Liberation Movements: Can Rights Derive From Wrongs' *Case Western Reserve Journal of International Law* Vol 13(2) 1981. pp281-289. The former two are in favour of the U.N.'s actions the latter against. At best the position seems to be that identified by Roberts who concluded that, "UN resolutions have given no clue as to whether liberation struggles ought to be fought within limits derived from, or akin to, the laws of war" A.Roberts. 'Prolonged Military Occupation: The Israeli-occupied Territories 1967-88' in Playfair E. (Ed) *International Law and the Administration of Occupied Territories: Two Decades of Israeli Occupation of the West Bank and Gaza Strip*. (Oxford. Oxford University Press. 1992) pp25-86. p64.

was also omitted from U.N. General Assembly Resolutions on the issue⁴²² in 1983, 1989, 1993 and 1994. Yet despite the removal of the contentious issue of state terrorism, it was still not possible to produce a definition of (sub-state) terrorism.

In light of the impasse in producing a definition of terrorism and criminalising it, the U.N. has merely adopted what has been described as a 'piecemeal' or 'object-oriented' approach to the criminalising of sub-state terrorism. That is instead of producing an international treaty prohibiting (sub-state)'terrorism', it has helped to create various multi-national treaty provisions on the suppression of aircraft hijacking; unlawful acts against the safety of civil aviation; unlawful acts against diplomats and other internationally protected persons; the taking of hostages; and the theft of nuclear materials⁴²³. However unlike like the regional organisations which also took this approach, it has been said that some of the U.N. sponsored conventions contain a clause excepting their application to those who carry out such acts in their struggle for self-determination⁴²⁴.

⁴²² See UNGA Resolutions 36/109 (1981), 38/130 (1983), 40/61(1989) all entitled "Measures to prevent terrorism and other forms of violence which endanger or take innocent human lives and jeopardise fundamental freedoms and study of the underlying causes of those forms of terrorism and acts of violence which live in misery, frustration grievance and despair and which cause some people to sacrifice human lives, including their own and in an attempt to effect radical change" and UNGA Resolutions 48/122 (1993) and 1994/46 (1994) both entitled "Human Rights and Terrorism" in Elagab O.Y. *International Law Documents Relating to Terrorism*. (Cavendish Publishing. London. 1995.). p28-29, 29-30, 30-32 and 32-33, and p34 respectively.

⁴²³ Namely The Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963); Hague Convention for the Suppression of Unlawful Seizure of Aircraft (1970); Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation(1971); Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons (or New York Convention) (1973); Convention Against the Taking of Hostages(1979); Montreal Protocol Supplementary Protocol to the Montreal Convention (1988) and Rome Convention and Rome Protocol Convention for the Suppression of Unlawful Acts Against Maritime Security, and Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located On the Continental Shelf (1988). Three conventions with a regional scope hve been adopted in an effort to combat international terrorism. These include the Convention to Prevent and Punish the Acts of Terorism Taking the Form of Crimes Against Persons and Related Extortion That Are of International Significance (OAS Convention): The European Convention on the Suppression of Terrorism (The European Convention): and The Agreement on the Application of the Application of the European Convention for the Suppression of Terrorism (the Dublin Agreement).

⁴²⁴ Wardlaw claims that the resolution (UNGA 28th session, 1974. resolution 3166) to which the U.N. Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons (1973) is annexed expressly provides at paragraph

Therefore despite all their debates, sub-committees and conferences, no single inclusive definition of international terrorism has been accepted by the United Nations or in generally accepted multi-lateral treaty⁴²⁵. This situation allowed Baxter, a Professor of International Law at Harvard University and United States Judge on the International Court of Justice, to declare that: "[w]e have cause to regret that a legal concept of 'terrorism' was ever inflicted upon us. The term is imprecise; it is ambiguous; and above all, it serves no operative legal purpose"⁴²⁶. However because various nations at the United Nations have claimed that state terrorism was covered by either existing human rights treaties and/or the laws of war⁴²⁷ it is necessary to examine what together can be, and have been on occasion, termed international humanitarian law⁴²⁸, even if this usage is not widespread.

International Humanitarian Law and State Terrorism.

4 that the Assembly 'recognises that the provisions of the annexed convention could not in any way prejudice the exercise of the legitimate right to self-determination and independence...by peoples struggling against colonialism, alien domination, foreign occupation, racial discrimination and apartheid". Wardlaw G. *Political Terrorism: Theory, Tactics and Countermeasures*. (2nd edition. Cambridge Univ.Press. Cambridge. 1989.).p110. For both the view that this convention does not legitimise the taking of hostages by national liberation movements, and the debate generally see Lambert J.L. *Terrorism and Hostages in International Law*. (Grotius Publications Cambridge. 1990.). p264-5.

425 Schacter O. 'The Extra-Territorial Use of Force Against Terrorist Bases'. *Houston Journal of International Law*. Vol. 11. 1989. p389 cited by Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.). p140.

426 Baxter R.R. 'A Skeptical Look at the Concept of Terrorism'. *Akron Law Review*. Vol.7 (3).1974. pp380-387.p380. Also cited by Murphy J.F. *Punishing International Terrorists: The Legal Framework for Policy Initiatives*. (Rowman and Allanheld. New Jersey.1985).p3. Likewise the Mallisons have declared that terrorism does not "have any widely accepted meaning in legal doctrine" hence the word does "not refer to a unitary concept in either fact or law". Mallison W.T. and Mallison S.V. 'The Concept of Public Purpose Terrorism in International Law: Doctrines and Sanctions to Reduce the Destruction'. *Howard Law Journal*. Vol. 18. 1974. pp12-28. p12.

427 Finger S.M. 'International Terrorism and The United Nations' in Alexander Y (ed.). *International Terrorism: National, Regional and Global Perspectives*. (Praeger. New York. 1976.).pp 323-348. p334. Unfortunately Finger does not specifically name these representatives.

428 Cohen uses this phrase and explains the debate about its usage. Cohen E. *Human Rights in Israeli Occupied Territories. 1967-82*. (Manchester University Press. Manchester. 1985.). pxiv.

Despite the fact that there is no specific mention of any word corresponding to 'terrorism' within the various human rights conventions and treaties, the previous section has shown that various state representatives have claimed that 'state terrorism' is linked to them⁴²⁹. Academics have also made such claims. For example in reply to this author's questionnaire, Jackie Smith asserted that human rights violations: "can be considered terrorist acts if used systematically to alter the behaviour of a political challenger"⁴³⁰, whilst Bowen wrote: "[w]hen the definition of legal acts contravenes broadly recognised international standards of human rights , then and only then are legal acts also state terrorism"⁴³¹. Indeed one third (40/120) of those generally 'Western' academics replying to this authors questionnaire indicated that 'human rights abuses' constitute state terrorism (without qualification).

Yet it is not just in response to this authors prompting that such opinions have been given. The Mallisons for example asserted that the result of terrorism (by state or non-state actors) was to deprive its victims of their most basic human rights⁴³². Terry in an article entitled 'State Terrorism: A Judicial Examination in Terms of Existing International Law', claimed that coercion applied by regimes to enforce policies not in accord with humanitarian principles can be thought of as "authorised terror" ⁴³³, similarly Paust claimed that "strategies of impermissible terrorism, regardless of name, are already proscribed under human rights law"⁴³⁴.

⁴²⁹ Including the U.S.A. which by hinting that such actions were already covered by the U.N. Charter, Universal Declaration of Human Rights, and Definition of Aggression, tried to encourage the other nations to focus upon insurgency terrorism within the debate. *Report of the Ad-Hoc Committee on International Terrorism*. GA 32 Sess. Supplement no.37 A. 32/37. 1977. para. 23. p24.

⁴³⁰ J. Smith in reply to question 7.

⁴³¹ G. Bowen in reply to question 9. Also K. Jeffrey and Maxwell Taylor who after answering 'Yes' to the same question 9 wrote 'Where the legal system does not generally protect human rights' and "Domestic laws can violate human rights" respectively.

⁴³² Mallison W.T. and Mallison S.V. 'The Concept of Public Purpose Terrorism in International Law: Doctrines and Sanctions to Reduce the Destruction'. *Howard Law Journal*. Vol. 18. 1974. pp12 -28.p18

⁴³³ Terry J.P. 'State Terrorism: A Judicial Examination in Terms of Existing International Law'. *Journal of Palestine Studies*. Vol. 10 (1). 1980. pp94-117.p95.

⁴³⁴ Paust J.J. 'An Introduction to and Commentary on Terrorism and The Law' *Connecticut Law Review* Vol. 19(40 Sumer 1987. pp679-. Certain pages sent by Paust with his reply to this author's questionnaire. p733.

Likewise in regards to that other part of humanitarian laws known as the laws of war (or armed conflict) various nations at the UN hinted⁴³⁵ that state terrorism has been covered by them, and numerous terrorologists have also linked violations of this legislation with state terrorism. Alfred Rubin, for example claimed that there was an analogy between terrorism and war crimes, at least in reference to what he termed the international legal order⁴³⁶, whilst the Mallisons claimed that: "a serious effort to reduce international terrorism may be assisted by reference to the laws of war"⁴³⁷. Solf seemed to imply that the analogy might apply to both the actions of the state at home and abroad when he said about a particular work on terrorism:

"Their definition excluded "State terrorism" such as state violations of human rights, state sponsored violations of diplomatic immunity, acts of genocide and violations of the norms of international law applicable to armed conflicts for the protection of civilians, POWs and other victims of war" ⁴³⁸

This author's questionnaire also produced some statistics to support the analogy between state terrorism and the laws of war. Thirty-eight percent (or 46) of the 120 respondents indicated that 'War crimes' constituted terrorism by those in power without reservations, and two-thirds (80) of the respondents indicated that the assassination of political leaders by the state constituted such terror/ism. Surprisingly the number of respondents who felt that the assassination of political leaders constituted terrorism by the State was (two) more than the 78 respondents (65%) who indicated that 'acts of violence that deliberately target the enemy's non-combatants' could constitute such terrorism.

⁴³⁵ Finger S.M. 'International Terrorism and The United Nations' in Alexander Y (ed.). *International Terrorism: National, Regional and Global Perspectives*. (Praeger. New York. 1976.).pp 323-348. p334. Unfortunately Finger does not specifically name these representatives.

⁴³⁶ Rubin A. 'Current Legal Approaches to International Terrorism: Difficulties of Legal Control' in Han H.H. (ed) *Terrorism and Political Violence: Limits and Possibilities of Legal Control*. (Oceana. London. 1983.). pp213-223. p214.

⁴³⁷ Mallison W.T. and Mallison S.V. 'The Concept of Public Purpose Terrorism in International Law: Doctrines and Sanctions to Reduce the Destruction'. *Howard Law Journal*. Vol. 18. 1974. pp12 -28. p23.

⁴³⁸ Solf W.A. 'International Terrorism in Armed Conflict' in Han (ed). *Terrorism and Political Violence: Limits and Possibilities of Legal Control*. (Oceana Publishers. London. 1993.). pp317-331. p317-318.

However because many of the authors previously noted shy away from either identifying or naming the particular war crimes (or conventions) to which they refer, their comments may not be as useful as they first appeared, at least in regards to attempts to produce a legal definition of terrorism. Other more useful authors in this regard are the Belgian researcher David, who claimed that a terrorist act is:

"any act of armed violence which, being committed for a political, social, philosophical, ideological or religious end, violates, among the prescriptions of humanitarian law, those interdicting the use of cruel and barbaric methods, attack of innocent objects or objects of no military interest"⁴³⁹;

Blakesley who wrote that:

"A war crime is a form of criminal terrorism; it is criminal terrorism when the state allows, or ignores, purposeful or criminally reckless killing of innocents-those hors du combat; or of the peacetime equivalent of those hors du combat. Crimes against humanity, such as genocide, torture or apartheid are forms of terrorism"⁴⁴⁰.

and Baxter, who even noted a specific convention when he claimed that if the perpetrators of acts of terrorism, -which he described as "the deliberate killing , wounding, or deprivation of the liberty of innocent civilians for political purposes in time of armed conflict (but not incident to conflict), whether accomplished by members of regularly constituted armed forces or persons not recognised as belligerents"-were to be recognised as acting on behalf of a State, their acts directed against civilians who take no part in the hostilities would constitute war crimes. For they would be 'grave breaches' of the Geneva

⁴³⁹ David E. 'Le Terrorisme en droit international'. In *Réflexions sur la définition et la répression du terrorisme*. (Editions de l'Université Libre de Bruxelles. Brussels. 1974) p125 cited by Blishchenko I. 'Acts of Terrorism Punishable Under International Law'. in Kochler H. (ed.). *Terrorism and National Liberation*. (International Progress Organisation. Peter Lang. Frankfurt. 1988.).pp281-303. p287.

⁴⁴⁰Blakesley C.L. *Terrorism, Drugs, International Law and the Protection of Human Liberty. A Comparative Study of International Law, the Nature, Rule and Impact in Matter of Terrorism, Drug Trafficking, War and Extradition*. (Transnational Publishers. Inc. NY. 1992). p42.

Conventions⁴⁴¹. Whilst in response to this author's questionnaire Yaeger wrote:

"If a nation's legal system or constitution, allows acts which violate the United Nations' Declaration of [Human] Rights, then I believe that international legality and morality eclipses a "legal system" in a sovereign state which allows such a violation"⁴⁴².

The most notable incorporation of specific pieces of human rights legislation and laws of war into an attempt to define state terrorism, is that by the Soviet author Blishchenko, and it is to his definition that the thesis now turns in order to illustrate the problems of attempting to incorporate any existing international humanitarian law into one's definition of state terrorism.

⁴⁴¹ Baxter R.R. 'A Skeptical Look at the Concept of Terrorism'. *Akron Law Review*. Vol.7 (3).1974. pp380-387.p381.

⁴⁴² C.H. Yaeger wrote in reply to question 9 "Can legal acts of violence carried out by those in power within the area of domestic jurisdiction ever be labelled as 'terror/ism'?"

Blishchenko's Definition of State Terrorism.

Blishchenko first qualified his definition of terrorism by the state by claiming that a terrorist act or a policy of terror in general can be practised both in peace and in wartime⁴⁴³. Writing in the late 1980's Blishchenko declared that:

"In peacetime, a terrorist act can be committed by the authorities of a state in respect of some of its citizens with a view to intimidating them or suppressing the opposition....or as part of the policy of racial discrimination, racial superiority, or as acts of genocide....These acts fall within the appropriate provisions:

1) of the Charter of the International Military Tribunal Art. 6, paragraph "c" contains the following statement:

a) Crimes against humanity; namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated;

2) 1948 Universal Declaration of Human Rights;

3) 1948 Convention on the Prevention and Punishment of the Crime of Genocide;

4) International Convention on the Elimination of All Forms of Racial Discrimination;

5) 1966 International Convention on Civil and Political Rights;

6) 1968 International Convention on Non-Applicability of Statutes of Limitation to War Crimes and Crimes against Humanity;

⁴⁴³ Blishchenko I. 'Acts of Terrorism Punishable Under International Law'. in Kochler H. (ed.). *Terrorism and National Liberation*. (International Progress Organisation. Peter Lang. Frankfurt. 1988.).pp281-303. p287

7) 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid."

Although he had preceded this "peacetime" part of his definition of state terrorism with the claim that:

"As to wartime, international law already provides for a series of standards to govern the prohibition and punishment of terrorist acts with regard to prisoners of war, civilians, combatants and non-combatants who will have stopped participating in hostilities even in the event of a conflict of other than international character; guerrillas and militia squads whose status while in captivity is held to be equivalent to that of war prisoners coming from standing armies, as well as in respect of cultural property during an armed conflict. These standards comprise:

1. Charter of the International Military Tribunal (Art. 6, b, c).

2. Geneva Conventions of August 12, 1949, for the Protection of War Victims , and respectively:

-Geneva Convention for the Amelioration of the condition of the Wounded and Sick in Armed Forces in the Field (Arts. 1, 12, 13);

-Geneva Convention for the Amelioration of the condition of the Wounded, Sick and Shipwrecked Members of armed Forces at Sea (Arts 3, 12, 13);

-Geneva Convention Relative to the Treatment of Prisoners of War (Arts. 3, 4, 13, 27, 32, 33).

3. The Hague convention for the Protection of Cultural Property in the event of Armed conflict, concluded under UNESCO auspices in 1954.

4. Convention on Non-Applicability of Statutes of Limitation to War Crimes and Crimes against Humanity of 1968, which was considered to be an indispensable procedural addition to the standards of international law directed towards the suppression of war crimes and crimes against humanity"⁴⁴⁴.

Indeed the grounds for linking state terrorism to the laws of war are in one sense stronger than linking them to human rights treaties, in that the word 'terrorism' is actually mentioned in a number of the individual laws of war treaties, and this reference to terrorism can be interpreted

⁴⁴⁴ Blishchenko I. 'Acts of Terrorism Punishable Under International Law'. in Kochler H. (ed.). *Terrorism and National Liberation*. (International Progress Organisation. Peter Lang. Frankfurt. 1988.).pp281-303. p287-288.

as state terrorism seeing that most of these pieces of legislation cover only the activities of states and can be signed and ratified only by states. For example Article 33 of the 1949 Geneva Convention IV 'Relative to the Protection of Civilian Persons in Time of War' declared that:

"No protected person may be punished for an offence he or she has not personally committed. Collective penalties and the likewise all measures of intimidation or of terrorism are prohibited".

whilst (undefined) "acts of terrorism", "are and shall remain prohibited at any time and in any place whatsoever" by Article 4 (2) (d) of the 1977 'Geneva Protocol II -Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts'. Similarly the word 'terror' is included within Article 13 (2) of this Geneva Protocol. It declared that:

"The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited".

Yet ironically the other (and first) Geneva Protocol of 1977 has been described as a charter for terrorism, a "pro-terrorist treaty masquerading as humanitarian law" by a US Deputy Assistant Secretary of Defence for negotiations (policy).⁴⁴⁵

However despite the tendency of various authors and states to link humanitarian law and state terrorism there are a number of good grounds for rejecting any attempt to incorporate specific pieces of international legislation. This thesis now goes on to explain these reasons starting with an examination of the human rights laws including all of that incorporated into Blishchenko's definition, and this is followed by a similar examination of the laws of war and of international law generally.

⁴⁴⁵ Feith D.J. 'Law in the Service of Terror'. *The National Interest*. No.1. 1985. p47. Cited by Sassoli M. 'International Humanitarian Law and Terrorism' in Wilkinson P. and Stewart A.M. *Contemporary Research on Terrorism*. (Aberdeen University Press. Aberdeen. 1987.).pp466-474. p467.

Human Rights Legislation.

Until the end of World war Two, most legal scholars and governments held to the view that international law did not impede the natural right of each equal sovereign power to be monstrous to its subjects⁴⁴⁶. However during the final stages of the war, the victorious allies decided to prosecute the leaders of the Germany and Japan. In the Nuremberg trials, those surviving leaders of Nazi Germany were prosecuted not only for waging aggressive war and for killing foreign citizens i.e. for 'crimes against the peace', and 'war crimes', but also for the slaughter of their own citizens. In pressing this last matter, under the heading of 'crimes against humanity' the victorious powers were opening new territory⁴⁴⁷.

This judgement of the International Military Tribunal at Nuremberg (the so called Nuremberg Principles) implied a core of obligations applicable to all sovereign powers concerning the treatment of their citizens. It has since been given unanimous approval by the UN General Assembly and in this way has become a piece of international customary law for many legal scholars. For others the Nuremberg Principles were applicable only to particular crimes committed during a particular time, for the Principles state "before or during the [Second World] war".⁴⁴⁸

Blishchenko specifically included two parts of the Nuremberg Principles in his definition of state terrorism, but only Article 6(c) entitled "Crimes against Humanity" will be examined here for this section that concentrates solely upon human rights law. The other relevant part entitled "War Crimes" mentioned within the wartime part

⁴⁴⁶ Bilder R. 'An Overview of Human Rights Law', in H.Hannum (ed). , Guide to International Human Rights Practice (Philadelphia,) 1984, pp4-5, cited by Farer T.M. and Gaer F. 'The UN and Human Rights: At the End of the Beginning' in Roberts A. and Kingsbury B. *United Nations Divided World The U.N.'s Role in International Relations* (2nd ed. Clarendon. Oxford. 1993) pp240-296. p240

⁴⁴⁷ Farer T.M. and Gaer F. 'The UN and Human Rights: At the End of the Beginning' in Roberts A. and Kingsbury B. *United Nations Divided World The U.N.'s Role in International Relations* (2nd ed. Clarendon. Oxford. 1993) pp240-296. p244.

⁴⁴⁸ It is of course possible to suggest that their use against the Nazi's could not be considered lawful for it went against the legal principle that the victim cannot be punished by a retrospective piece of legislation.

of Blishchenko's definition will be considered shortly within the next section dealing with the laws of war. Article 6(c) declares as Crimes against Humanity:

"Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connection with any crime against peace or any war crime"

However because of its linkage to war crimes the assessment of its incorporation into any definition will be addressed later in the section on war crimes.

At about the same time as the Nuremberg Principles were being drafted, interventionist thinking was affecting the work of the founders of the United Nations. The resulting U.N. Charter specifically allowed for the Security Council to interfere in the internal affairs of its member states (if not non-members). A point which is lost on those who mistakenly quote only the first part of the authorising article to deny that the U.N. has any authority to intervene in domestic affairs of its members. Article 2(7) states that:

"Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; *but this principle shall not prejudice the application of enforcement measures under Chapter VII*".

It is necessary to include this enabling article here because the UN Charter also made a number of references to human rights. The 'Preamble' affirmed faith in fundamental human rights, in the dignity and worth of the human, in the equal rights of men and women and of nations large and small. Whilst within the chapter entitled 'Purposes', Article 1(3) stated the aim of "promoting and encouraging respect for human rights and for fundamental freedoms for all without discrimination as to race, sex, language or religion".⁴⁴⁹ The means to achieve this end were stated within both Article 13(1) (b), which

⁴⁴⁹ This aim was repeated in article 55.

mandated the General Assembly to initiate studies and make recommendations "for the purpose of....assisting in the realisation of human rights", and Article 68 which required the U.N.'s Economic and Social Committee to set up a commission for the promotion of human rights. The latter was duly set up and was soon joined by a complex network of committees and procedures. Between them these committees monitored the abuse of human rights both territorially and thematically and drafted new human rights treaties and the single issue conventions prohibiting for example racial discrimination and genocide.

However in terms of the reality of international law, the actual wording of the Charter does not even demand observance of human rights from its members of the organisation (never mind non-members). Instead the Charter talks merely of the promotion of such rights⁴⁵⁰. Even the Universal Declaration of Human Rights (or U.D.H.R.) which was passed unanimously by the General Assembly on 10 December 1948, and is accepted by every new member, is not legally binding even on U.N. members for it is merely a declaration of the General Assembly⁴⁵¹. Indeed it has been argued that the U.D.H.R. was unanimously accepted precisely because it was a merely a forward looking non-binding declaration of the UN General Assembly.⁴⁵² Whilst even if one did claim that the U.D.H.R. (or at least some of it) has subsequently become a piece of international customary law as a result of its usage by U.N. human rights committees to produce other human rights treaties, and to

⁴⁵⁰ As such it is future orientated, it does not demand immediate implementation. Thus the preamble states that the General Assembly: "Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction."

⁴⁵¹ "In view of the greater solemnity and significance of a "declaration" it may be considered to impart, on behalf of the organ adopting it, a strong expectation that members of the international community will abide by it. Consequently, in so far as the expectation is, gradually justified by state practice, a declaration may by custom become recognized as laying down rules upon states" UNSCOR, 33d Sess, UN Doc. E/CN.4/L at 610 para. 4 (1962). W. Ofuatey-Kodjoe. 'Self Determination' in Schachter O. and Joyner C.C. (Eds.) *United Nations Legal Order* (Cambridge University Press. Cambridge. 1995) pp349-389. p369.

⁴⁵² Robertson A. H. *Human Rights in the World*. (3rd. ed. J.G. Merrils. Manchester. 1993.). p96.

monitor gross violations of human rights, it still poses a number of problems for those, like Blishchenko, who would include it within their definition of state terrorism.

The first problem for those who would incorporate the U.D.H.R. into their definition, is that it contains thirty articles which would make any definition of terrorism rather long. One could of course decide to limit this on the grounds that only some of them constitute customary international law, but then one would have to decide which parts did so (and why). Either way, the task of incorporating the wording is complicated by the fact that many of its provisions are contradicted by other clauses that blunt their effects. Article 19 for example which supposedly guarantees that:

"Everyone has the right to freedom of opinion and expression: this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers"

is blunted by both Article 29(2) which states that in the exercise of these rights and freedoms, everyone shall be subject:

"....only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of *morality, public order* and the general welfare in a democratic society".

and by Article 30 which states that:

"Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein".

Indeed knowing that the U.D.H.R. was merely a declaration of the General Assembly with more of a moral than legal status, the U.N. itself decided to produce human rights legislation which would impose legal obligation on those who would sign and ratify them. The result was that many of the human rights contained within the U.D.H.R. were eventually codified within two different pieces of legislation eighteen years later. These two covenants -the International Convention on Civil

and Political Rights (or I.C.C.P.R.) and the International Convention on Economic, Social and Cultural Rights (I.C.E.S.C.R.)- were made available for signature in 1966, and once they had achieved the appropriate number of ratifications they entered into force in 1976. The fact that they were by no means signed by all members of the U.N. never mind non-members may create a problem for some of those who would include only customary international legislation, although this would ultimately depend upon their rationale. The details of the I.C.E.S.C.R. will not be considered here, for two reasons. The primary one is that neither Blischchenko, nor any other source noted by this author, has specifically included any part of this treaty within their definition of terrorism or state terrorism. The secondary reason is the fact that whilst the thesis applies the various definitions of state terrorism to particular counter-terrorist policies of Israel, the application does not examine the economic or social elements of these policies. Therefore the only part of the I.C.E.S.C.R. which will be considered is Article 1.1. for the exact wording of the clause is shared with Article 1.1 of the I.C.C.P.R. It declares that:

"All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

If Article 1.1 was taken as the confirmation of the view that states do not have the right to use violence to resist the right of undefined peoples to achieve self-determination then its inclusion would pose a problem when one was trying to assess the use of violence by states such as Israel in their fight against nationalist 'terrorist' groups such as the Palestine Liberation Organisation, like this author is. However the inclusion of this article poses no particular problem for assessing the violence of states who were fighting nationalist 'terrorist' groups, as long as one considers it to be one of those rights to which states can derogate in accordance with Article 4(1) of the convention. Such derogations from the rights mentioned within the treaty are permitted "in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed"⁴⁵³.

⁴⁵³Article 4(1). states, "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the

As for the inclusion of the remaining 53 articles contained within the I.C.C.P.R. in one's definition of state terrorism this would again produce a rather long definition. In addition there is a problem of incorporating 'positive' rights. For example Article 25 declares that every citizen shall have the right and the opportunity amongst other things:

"To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors".

To say that a state which does not have genuine periodic elections is committing an 'act of terrorism' may get support from those authors who would like to label certain actors as 'terrorist states'⁴⁵⁴, is going too far for this author who would prefer to label a state terrorist according to the actions it takes.

There is also the problem of interpreting the meaning of articles which are blunted by 'clawback' clauses, or by other articles that negate them under certain circumstances. An example of the former is provided by Article 19. Point 2 of which states that "Everyone shall have the right to freedom of expression...", only for point 3 to state that :

"It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin".

⁴⁵⁴ Perhaps it would get support from those such as Wilkins who wrote, "the states monopoly of violence cannot be justified simply because it exists but only by a demonstration that it is morally legitimate". Wilkins B T. *Terrorism and Collective Responsibility*. (Routledge. London. 1992.). p63. Or Lovas and Anderson who wrote that legitimacy is not a question of the facts of power but a question of who morally has a right to wield power and rule". Lovas I. and Anderson K. 'State Terrorism in Hungary: The Case of Friendly Repression'. *Telos* (Special Issue on Terrorism and State Terrorism). No54. Winter 1982-83 pp77-86. p85. Or one of the anonymous authors who after indicating in question 9 that legal acts of violence could constitute state terrorism wrote that 'When the "legal" acts are actions of a tyrannical government. For example, Stalin's vast gulags were 'legal' under Soviet "law"'. Similarly after indicating that legal acts could be labelled state terrorism, A. Geifman wrote 'when the government perpetuating these acts is totalitarian'.

(b) For the protection of national security or of public order (ordre public), or of public health or morals."

If this were not enough article 4(1) of the I.C.C.P.R. allows the state to ignore this right along with nineteen others "In time of public emergency which threatens the life of the nation". Leaving only the seven rights (of the I.C.C.P.R.'s 27 rights) listed within Paragraph (2) of Article 4 which may not be derogated under any circumstances⁴⁵⁵.

Penultimately, Blishchenko also noted two single issue treaties produced under U.N. auspices. The first was the 'Convention on the Prevention and Punishment of Genocide' made available for signature following its adoption by the General Assembly on 9 December 1948. In Article 1, the contracting parties undertook to prevent and to punish genocide, which was a crime under international law whether committed in time of peace or in time of war. Genocide was defined as meaning any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group:

- "(a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about
its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group."

⁴⁵⁵ Article 4(2). declares that no derogations may be made under this provision from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18. Article 6 declares that everyone has "the right to life", which "shall be protected by law", but it also allows for the death penalty. It does however declare that "No one shall be arbitrarily deprived of his life". Article 7 states that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 8(1), and 8(2) declare that no one shall be held in slavery or servitude respectively. Article 11 declares that "No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation". Article 16 declares that everyone shall have the right to recognition everywhere as a person before the law. Finally Article 18 states that Everyone shall have the right to freedom of thought, conscience and religion and to manifest his religion or belief in worship, observance, practice and teaching, although according to point 3, "Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."

Whilst Article 3 of the convention also made it an offence to conspire, attempt or to actually commit genocide, along with complicity in or direct and public incitement to commit genocide. Unfortunately this definition of genocide is so broad and vague as to outlaw not only inter-state war on the grounds that it involves the killing of members of another national or ethnic group, but also any use of violence by the State to fall foul of its wording. The only way around such an interpretation is to say that these activities constitute genocide only when the intent was to commit these acts upon all members of the group, not just the immediate (combatant) victims.

In contrast 'The International Convention on the Elimination of All forms of Racial Discrimination' (7 March 1966) does not pose any particular problems for anyone wanting to include it within a definition of state terrorism, apart from perhaps its size. At 25 articles it would also produce a rather longwinded definition. It would of course be possible to integrate the main thrust of the convention which is contained within points (a) and (b) of Article 2. These declare that those who have signed and ratified the convention will, "engage in no act or practice of racial discrimination against persons, groups of persons or institutions" nor "sponsor, defend or support racial discrimination by any persons or organisations". The main problem with incorporating such a convention into one's definition is that it means incorporating positive rights which would mean labelling the State's inactivity as terrorism. For example it would mean labelling as an act of terrorism a state failure to declare as an "offence punishable by law", "all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts" in accordance with Article 3(a).

Finally, the inclusion of the 'International Convention on Non-Applicability of Statutes of Limitation to War Crimes and Crimes against Humanity' and the 'International Convention on the Suppression and Punishment of the Crime of Apartheid' would produce no particular additional problems once *apartheid* was actually identified, except for adding many more articles to the length of the definition (the term "the crime of *apartheid* " is defined within Article 2 of the latter as including policies and practices of racial segregation and discrimination similar to those practised in South Africa). This is because the only thing they

add which has not already been dealt with here (or will be dealt with in the next section) is the crimes of *apartheid*. The latter of the two conventions declares this to be a "Crime against humanity" whilst the former specifically outlaws "eviction by armed attack or occupation and inhuman acts resulting from the policy of *apartheid*" in Article 1(b).

The Laws on War.

The term 'laws of war' is used here to refer to treaties that prohibit particular weapons of war, and to those that prohibit the use of violence against particular targets. Although in its widest sense it can also be used to refer to 'Crimes against the Peace' and 'Crimes against Humanity' also mentioned within the (Nuremberg) Charter of the International Military Tribunal.

The origins of the contemporary laws of wars can be traced back to biblical times or even Ancient Greece and Rome. Deuteronomy for example advised against a scorched earth policy⁴⁵⁶, whilst the Greeks and Romans customarily observed certain humanitarian principles which have become fundamental rules of the contemporary laws of war⁴⁵⁷. Similar humanitarian limitations in the form of the rules of chivalry were customarily adhered to by mediæval knights in Europe and were also to be found in canon law around the same time. As the body of international law began to develop in Renaissance Europe early writers such as Victoria and Grotius gave priority to the consideration of hostility in international relations⁴⁵⁸. Although the foundation of the contemporary legal regime is thus very old⁴⁵⁹, the development of the laws of war since ancient times is far from linear. It was only in the second half of the nineteenth century that the customary principles began to be codified in particular binding multi-lateral agreements be it declarations, conventions or protocols⁴⁶⁰. According to Roberts and Guelff the first such agreement was the 1856 Paris Declaration on

⁴⁵⁶ Deuteronomy for example advised that: "When thou shalt besiege a city a long time, in making war against it to take it, thou shalt not destroy the trees thereof by forcing an axe against them: for thou mayest eat ther fruit, and thou shalt not cut them down (for the tree of the field is man's life) to employ them in the siege". Deuteronomy Chapter 20. Verse 19 in *The Holy Bible*. King James Version. (Collins. London. 1953.).

⁴⁵⁷ They cite Phillipson C. *The International Law and Custom of Ancient Greece and Rome*. (Macmillan. London. 1911.). Vol II, pp166-384. Roberts A. and Guelff R.(eds.). *Documents on the Laws of War*. (2nd. ed. Clarendon Press. Oxford. 1989.). p2.

⁴⁵⁸ Roberts A. and Guelff R.(eds.). *Documents on the Laws of War*. (2nd. ed. Clarendon Press. Oxford. 1989.).p2. They cite Victoria F. de *Relectiones Theologicae* (Lyons. 1557) and Grotius H. *De Jure Belli ac Pacis, libri tres* (Paris. 1625.) amongst others.

⁴⁵⁹ Roberts A. and Guelff R.(eds.). *Documents on the Laws of War*. (2nd. ed. Clarendon Press. Oxford. 1989.). p2.

⁴⁶⁰ Roberts A. and Guelff R.(eds.). *Documents on the Laws of War*. (2nd. ed. Clarendon Press. Oxford. 1989.). p2-3.

maritime war, soon to be followed by the 1864 Geneva convention on wounded and sick and the 1868 St. Petersburg declaration on explosive projectiles⁴⁶¹. It was also during the late nineteenth century, 1863 to be precise, that the International Committee of the Red Cross which would have such a dramatic influence on the laws of war was also formed.

The process of codification accelerated at the turn of the century following the first and second Hague Peace Conferences which produced sixteen conventions and four declarations between them. At the conclusion of the First World War the Treaty of Versailles and other peace treaties expressly recognised that certain methods of conducting warfare were prohibited, and in the inter-war years a number of agreements came into force most notably the 1925 Geneva Protocol on gas and bacterial warfare and the 1929 Geneva convention on prisoners of war⁴⁶². Since World War Two various international agreements have been concluded, including the previously noted Nuremberg Principles, the UN Genocide Convention of 1948, and the four Geneva Conventions of 1949, to which the two 1977 Geneva Protocols were additions. Also worthy of note are the 1954 Hague Convention and Protocol on the Protection of Cultural Property and the UN Convention on Statutory Limitations Regarding War Crimes for they are both mentioned within Blishchenko's definition of state terrorism.

Again there are specific problems with incorporating the individual laws of war mention by Blishchenko, although Article 6(b) of the Nuremberg Principles-the section entitled "War Crimes"- does not create any. This is because the wording can be read to legitimise any wartime "destruction" justified by military necessity⁴⁶³. If this is the correct interpretation, then this catch all category ironically negates any point in including the said article in any attempt to define acts of state terrorism, unless of course one wanted to say that all uses of

⁴⁶¹ Roberts A. and Guelff R.(eds.). *Documents on the Laws of War*. (2nd. ed. Clarendon Press. Oxford. 1989.). p3.

⁴⁶² Paragraph based upon Roberts A. and Guelff R.(eds.). *Documents on the Laws of War*. (2nd. ed. Clarendon Press. Oxford. 1989.). p3.

⁴⁶³ Article 6 (b) declares as War crimes: "Violations of the laws or customs of war which include, but are not limited to, murder, ill-treatment or deportation to slave-labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity".

military might equals state terrorism⁴⁶⁴. Here it should be noted that the incorporation of the offences contained within Article 6(c) entitled "Crimes against Humanity" namely, murder, extermination, enslavement, deportation does not pose any problems unless one believes that they apply only to such actions committed during World War Two. The only problem would be deciding upon what constitutes "other inhumane acts committed against any civilian population"⁴⁶⁵.

Apart from making any definition rather long, the only specific problem with incorporating the articles of the various Geneva Conventions of 1949, as Blishchenko did, is the incorporation of its positive rights. For example it seems absurd to call a states' failure to supply sufficient quantity of "underwear and footwear" that is appropriate for the climate of the region to any prisoners of war held by a state in accordance with Article 27 of the Geneva Convention Relative to the Treatment of Prisoners of War, as 'state terrorism'.

As for the incorporation of 'The Hague Convention for the Protection of Cultural Property in the event of Armed Conflict' it would add little extra to any definition which had incorporated the previous pieces of international law except detail. For whilst it specifically protects cultural objects which it defines in Article 1 and 8 these would surely fall within the non-combatant provisions of the other laws of war. Although this matter is confused by the fact that Article 4(2) states that the protecting provision "may be waived only in cases where military necessity imperatively requires such a waiver". The inclusion of this Hague Convention would unfortunately mean the addition of 40 extra articles to a definition including some positive rights such as that declared within Article 7, which says that the high contracting parties undertake to introduce in time of peace into their military regulations

⁴⁶⁴ Perdue for example wrote, '[i]t is ironic that in the political lexicon of terrorism, war between states is routinely omitted...Perhaps in addition to the waging of war, the preparation and planning for mass destruction in the nuclear age should be redefined as the ultimate form of terrorism'. Perdue W. *Terrorism and the State: A Critique of Domination Through Fear* (Praeger New York. 1989.). p19-20.

⁴⁶⁵ Article 6(c) states: "Crimes against Humanity; namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated".

or instructions such provisions as may ensure observance of this convention, and to foster a spirit for the respect of cultural property.

International Law

Apart from those problems inherent within the specific pieces of international humanitarian law noted within the previous two sections, there are more general and perhaps more important reasons for not incorporating international law within a definition of state terrorism. Although this author can see the attraction of judging each state equally against a standard which appears to be contain universal values, the standard of international law is not as solid as it might seem. Indeed one can credibly ask whether an identifiable international legal system exists, for as Akehurst noted "the population believe that international law is not really law"⁴⁶⁶. The reasons for holding this latter view can be derived from the observation that there is an absence of a criminal code, and a international police force, nor is there an international court with compulsory jurisdiction to which states are required to submit⁴⁶⁷.

The second question to be answered by those who would incorporate international law within their definition of state terrorism is 'Which pieces?' (and why?). An issue that begs the questions 'What constitutes international law?' and 'How is international law produced?'. The answers to these questions arguably contain enough uncertainty to deter anyone from incorporating any international law into their definition of state terrorism. In identifying the sources of international law authors invariably refer to Article 38 of the Statute of the International Court of Justice which states that:

"The Court , whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

- (a) international conventions, whether general or particular, establishing rules expressly recognised by the contesting states;
- (b) international custom, as evidence of a general practice accepted as law
- (c) the general principles of law recognised by civilised nations.

⁴⁶⁶ Akehurst M. *A Modern Introduction to International Law* (6ed. Routledge. London. 1992.). p1.

⁴⁶⁷ Wallace R.M.M. *International Law: An Introduction*. (Sweet and Maxwell. London. 1986.). p217 and p3.

(d)....judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of the rules of law".

Whilst identifying international treaties is straightforward, the applicability of each to the circumstances in hand is often disputed as the debate over the applicability of the Geneva Convention (IV) to Israel's occupation of the West Bank reveals⁴⁶⁸. There is also question of which of the many international treaties should be incorporated into a definition of state terrorism (and why). One way around this is to incorporate only those relevant 'pieces' which have achieved the status of international customary law. Unfortunately the identification of international customary law is highly contentious for it is based upon a vague formula involving the proving of "constant and uniform"⁴⁶⁹ usage, which is dependent upon factors such as the acceptance by an sufficiently large number of states including all the concerned states over an unspecified number of years⁴⁷⁰.

Then there is the question of whom does the international law bind. This and the question of which international law to include come together within the debate between the 'monists' and the 'dualists'. The

⁴⁶⁸ For details of the debate from both sides see Bar-Yaacov N. 'The Applicability of the Laws of War to Judea and Samaria (The West Bank) and to the Gaza Strip' *Israeli Law Review*. Vol. 24. No.3-4. 1990. pp485-506, and Qupity M. 'The Application of International Law in the Occupied Territories as Reflected in the Judgement of the high Court of Justice in Israel' in Playfair E. (ed.). *International Law and the Administration of Occupied Territories: Two Decades of Israeli Occupation of the West Bank and Gaza Strip*. (Clarendon. Oxford.1992.). pp87-125.

⁴⁶⁹ Dixon citing the words of the Permanent court in the *Lotus Case*. Dixon M. *Textbook on International Law*. (2nd. ed. Blackstone Press. London. 1993.). p26. Dixon also wrote, "[i]t is not enough for the formation of customary law that there is general, uniform and consistent state practice. In order that this practice is to constitute law, States must recognize it as binding upon them as law" and "[i]t is, however, impossible to determine exactly how many staes must participate in a practice, for international law is not concerned with percentages, nor does it operate by way of majority vote'.

⁴⁷⁰ Dixon M. *Textbook on International Law*. (2nd. ed. Blackstone Press. London. 1993.). He also wrote "[t]he ICJ has not presented any clear guidelines on the time required for the formation of customary law". p28. William O'Brien wrote "[t]o begin with there is the problem of...balancing qualitative verses quantitative evidence of custom. By qualitative, I mean evidence that the most powerful states and/or those most relevant to a subject accept a rule of customary interntional law. By quantitative, I mean evidence that many states, irrespective of power and relevance accept that rule.....A further difficulty with customary international law is temporal....how long it takes before a rule of customary international law is clearly established.." O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p83.

former believe that international law binds all states and prevails over municipal law⁴⁷¹, the latter claim that international law and municipal law are two distinct systems⁴⁷² and at best international law is in existence only when it does not clash with the individual states municipal law. Most states including Israel⁴⁷³ can be seen to take the dualists position, in that whilst they may automatically incorporate international customary law its provisions are overruled by any conflicting piece of municipal law. Of course those who would incorporate international law within their definition of terrorism do not have to take such a view, but they may want to keep it in mind when contemplating the reasons why they are including those pieces of international law that they do. Another issue which they would need to consider is the debate between the traditionalists and the modernists, a debate which revolves around the impact that the creation of the United Nations (including The International Court of Justice, which is the judicial body of the United Nations) has had on international law. This is particularly important in regards to the issue of the use of force abroad and is therefore relevant to many conceptions of state terrorism. Thus for many publicists the legal rules or 'laws' that surround the United Nations are valid only in relation the existing notions of international law, whilst others believe that the United Nations Charter has revolutionised international law. However because the latter -so called modernists- seem to have established a virtual hegemony over the contemporary debate as a result of their pervasive presence it is therefore to the modern interpretation of international law that this thesis now focuses itself.

For the modernists, the production of international public law cannot be separated from the workings of this institution, its constitution and its rules. Modernists claim that Article 2(6) of the U.N.'s constitution enables its actions to constitute 'international law'⁴⁷⁴. Although on this

⁴⁷¹ Dixon M. *Textbook on International Law*. (2nd. ed. Blackstone Press. London. 1993.). p69.

⁴⁷² Dixon M. *Textbook on International Law*. (2nd. ed. Blackstone Press. London. 1993.). p70.

⁴⁷³ Lapidoth R. 'International Law Within the Israel Legal System'. *Israel Law Review*. Vol 24 (3-4). 1990. pp450-485. p452.

⁴⁷⁴ Article 2(6) states, "The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security".

point even they would accept that its court is still far from attaining a centralised judicial authority even amongst the membership of the UN, and some of those who have accepted its jurisdiction have attached reservations which can weaken or defeat its effect⁴⁷⁵. However most modernists would also accept that the mere declarations and resolutions of the General Assembly do not automatically constitute international law as some commentators mistakenly assume, although such resolutions and declarations might help create customary international law. These views contrast sharply with those of the traditionalists who distinguish the non-voluntary basis of obligations within the U.N. to its rules from the voluntary basis of participation in it. Thus there exists a debate over whether or not the pronouncements of the United Nations' Security Council which legally bind its members also bind the handful of nations in the world who are not members. For the traditionalists, Security Council resolutions do not bind non-members, for the U.N. is merely an international body with its own court of justice and constitutional rules founded by multi-lateral treaty and as De Lupis noted (but refused to accept) contracting parties to a treaty cannot make that treaty bind third States; "[t]o such third states the treaty is not binding, for it is a transaction between others, a *res inter alios* action"⁴⁷⁶. The result of this is that United Nations action would be illegal if it concerned non-member states⁴⁷⁷.

Whatever one's view on the disputes noted above, those who would wish to integrate international law into a definition of state terrorism would first of all have to decide which treaties, paragraphs and/or principles, they were going to incorporate and the rationale behind this. The importance of the rationale here is one of consistency. Those who would incorporate international legislation within their definition of state terrorism must have a reason, and this is important not just in itself, but for the sake of consistency in one's definition. For example, it is not illogical to suggest that if those incorporating international

⁴⁷⁵ Fawcett J. *Law and Power in International Relations*. (Faber and Faber. London.1982.).p44. Fawcett also noted that its compulsory jurisdiction has been recognized by barely a third of the countries of the world.

⁴⁷⁶ De Lupis I.D. *The Law of War*. (Cambridge University Press. Cambridge. 1987.).p343In this light the founders of the U.N. rejected compulsory membership, refused to prohibit withdrawal and made provision for expulsions.

⁴⁷⁷ De Lupis cites Thomas A.V. and Thomas A.J. *Non-Intervention* (Dallas.1956) in De Lupis I.D. *The Law of War*. (Cambridge University Press. Cambridge. 1987.). p226

humanitarian law within their definition might incorporate just those pieces of legislation that constituted international customary law (whatever that is). However if one did this consistency would surely demand that those who would incorporate international law as it relates to the State's use of violence within its area of jurisdiction, should also incorporate international law as it relates to the use of force abroad, or otherwise justify their omission. Secondly it is necessary to think of any incorporation in terms of its effect on one's definition of sub-state terrorism, otherwise there may be little connection between one's definition of state terrorism and of insurgent terrorism.

One's rationale is also important for other reasons. One of the problems of contemporary international law is that it contains many contradictory parts in that certain paragraphs of one treaty conflict with other pieces, customs of international law. This is perhaps nowhere more apparent than in regards to international legislation regarding the right to use force abroad. An examination of this area also allows the author to provide specific criticisms of those pieces of this type of legislation which Blishchenko incorporated into his definition.

For probably the vast majority of modernists, and international law scholars, the international law legitimising the use of force outside each state's area of domestic jurisdiction has changed dramatically due to impact of the United Nations, although it is possible to claim that this occurred with the creation of the U.N.'s predecessor.⁴⁷⁸ Traditionally, states could institute war at any time to vindicate their rights. The only real qualification of this right that was accepted by states during this period was the requirement that war be declared. Hence a state simply declared war, and it was lawful⁴⁷⁹. This arguably changed in the twentieth century with either the Covenant of the League of Nations, the Kellogg-Briand pact of 1928, the Nuremberg Principles of 1945 and/or the UN Charter. Whichever it was, all non-traditionalist scholars accept that the UN Charter now contains the rules for the use of force in

⁴⁷⁸ Amend and Beck point out that under the League of Nation's Covenant an elaborate set of procedures was established to restrain the recourse to force. For the debate on the issue see Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.). p19-21.

⁴⁷⁹ Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.). p17.

international relations. It is to this that the thesis now turns, but it attempts to explain why it is not a good idea to use international law to define state terrorism committed abroad, by revealing the confusion surrounding the right of states to use violence in response to acts of international terrorism.

The United Nations and the Use of Force in the International System of States.

If one were to attempt to incorporate international law into one's definition of state terrorism the key question to be answered would be 'Under what circumstances, if any, may a state lawfully use force within the international arena?' (and if the answer to this was positive, then the second question to be answered is 'How, if at all, may a state do so?'). This part of the thesis attempts to illustrate the problems involved in any answer to this by revealing the answers to the specific question 'Under what circumstances, if any, may a victim state lawfully respond with armed force to the incidence of sub-state terrorism?'⁴⁸⁰. This is important because one would require an answer to this question if one were to ask, like this author does, whether any of Israel's counter-terrorist actions constituted state terrorism?

Whilst attempting to answer this question on lawful responses to sub-state terrorism, Amend and Beck noted that 'publicists' on the issue have failed both to agree on the parameters of the terrorist threat engendering a state's right to use force in self defence; as well as how a state may legally respond with force to terrorist acts. This thesis will now illustrate these points by explaining the U.N. made law surrounding the use of force.

Like its predecessor, the League of Nations, the U.N. was founded out of a desire to restrain and regulate the use of force in international relations. Hence the Preamble states:

"WE THE PEOPLES OF THE UNITED NATIONS DETERMINED

⁴⁸⁰ Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.). p157.

to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, to unite our strength to maintain international peace and security, and to ensure by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest"

Whilst Article 1 declared that:

"The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end:

to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace."

In line with this assertion Article 2(3) stated that:

"All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered"

whilst Article 2(4) noted that:

"All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or any other manner inconsistent with the purposes of the United Nations"

The uncertainty surrounding the right of states to use force in the international sphere surrounds the meaning of this latter article. Article 2(4) proscribes only that use or threat of force which is "against the territorial integrity or political independence of another state" or is otherwise "inconsistent with the purpose of the United Nations". Unfortunately this vagueness causes tremendous problems for anyone attempting to identify the (modern) international law on the use of force. Indeed ultimately it constitutes one of the reasons for rejecting the legalistic approach.

Additional, if perhaps less well known, problems surrounding the contemporary international law on the use of force, arise as a result of

the fact that the Charter also mentions four other explicit exceptions to Article 2(4)'s prohibition on the "use of force". A phrase that will now be used to include "the threat" of such force for the sake of avoiding unnecessary repetition. These four explicit exceptions to Article 2(4)'s prohibition on the use of force are:

1) force used in "self-defence", both individual and collective, in accordance with Article 51, which states,

"Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."

2) The use of force authorised by the Security Council of the United Nations as mentioned in Article 51. The parameters for this are set out in detail within Chapter 7 which is entitled 'Actions with respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression'. Specifically Article 42 contained within this Chapter enables the Security Council to:

"take such action by air, sea or land forces as may be necessary to maintain or restore international peace and security"

Action may include intervention in the internal affairs of constituent member states. A point which is lost on those who mistakenly quote only the first part of the authorising article (Article 2(7)) to deny that the U.N. has any authority to intervene in domestic affairs. This states that:

"Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; *but this principle shall not prejudice the application of enforcement measures under Chapter VII*".

This oft forgotten sentence refers to the aforementioned Article 42 and other Articles within Chapter VII which outline the duties of U.N. members in this respect. These include the key articles 39 and 24 which respectively state that :

"The Security Council [of the U.N. which] shall determine the existence of any threat to peace, breach of the peace, or act of aggression and shall make recommendations or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security".

and

"1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.

3) Force undertaken by the five major powers, who would soon become the five permanent members of the Security Council before the Security council was functional in accordance with Article 106⁴⁸¹. These are also known as the Transitional Security Arrangements.

4) The use of force against the 'enemy' states of the second world war in accordance⁴⁸² with Article 107. The 'enemy states' in question were

⁴⁸¹Article 106 states "Pending the coming into force of such special agreements referred to in Article 43 as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under Article 42, the parties to the Four-Nation Declaration, signed at Moscow October 30, 1943, and France, shall, in accordance with the provisions of paragraph 5 of that Declaration, consult with one another and as occasion requires with other Members of the United Nations with a view to such joint action on behalf of the Organization as may be necessary for the purpose of maintaining international peace and security".

⁴⁸² Nothing in the present Charter shall invalidate or preclude action, in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action.

according to Article 53 ⁴⁸³ those states which had been an enemy of any signatory of the present Charter during the Second World War .

However once these latter two legal uses of force have been discarded on the grounds that are no longer applicable (or even if they are, they do not cover Israel whose actions are the main concern of the application of the various definitions within this thesis), one is left with Article 51, which legalises the use of force in self-defence, as well as Security Council violence. The wording of which leaves too many important questions unanswered. Perhaps the most relevant of these unanswered questions is, 'Does a state have a right to use force in response to a 'terrorist' attack from outside of its area of jurisdiction?'. Unfortunately the answer is far from clear, as it depends upon one's definition of an armed attack?⁴⁸⁴ For example there is the assertion that either the 'scale' and /or 'intensity' of certain cross border attacks means that they cannot be considered sufficient provocation to justify a legal armed response. Brownlie for example claimed that *fedayeen* -like cross-border raids do not constitute an 'armed attack' under Article 51, especially if such attacks are 'isolated or sporadic'⁴⁸⁵. Similarly Garcia-Mora noted that there is an "almost total absene" of a conviction among governments that the activities of armed bands constitute an armed attack, thus justifying measures of self-defence under Article 51 of the U.N. Charter⁴⁸⁶. However just to show the complexity of the matter is

⁴⁸³Article 53 states "1. The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state. 2. The term enemy state as used in paragraph 1 of this Article applies to any state which during the Second World War has been an enemy of any signatory of the present Charter".

⁴⁸⁴ For example whether one believes that an armed attack can differ from an act of 'aggression', the latter of which was mentioned in Chapter VII of the Charter' and was later defined by the UN General Assembly within one of its resolutions.

⁴⁸⁵ Brownlie 'International Law and the Activities of Armed Bands' International and Comparative Law Quarterly. Vol 7. 1958. p731 cited by Levenfeld B. 'Israel's Counter-Fedayeen Tactics in Lebanon; Self-Defense and Reprisal Under Modern International Law'. *Columbia Journal of Transnational Law*. Vol. 21. (1) 1982. pp1-48. p16.

⁴⁸⁶ Garcia-Mora M. *International Responsibility for Hostile Acts of Private Persons Against Foreign States*. (1962). p129 cited by Levenfeld B. 'Israel's Counter-Fedayeen Tactics in Lebanon; Self-Defense and Reprisal Under Modern International Law'. *Columbia Journal of Transnational Law*. Vol. 21. (1) 1982. pp1-48. p16. After studying

worth noting that Brownlie also noted that a "co-ordinated and general campaign by powerful bands of irregulars, with obvious or easily proven complicity of the government of the State from which they operate, would constitute an "armed attack"" under Article 51"⁴⁸⁷.

In addition, it has been argued that since Article 51 refers to self-defence as an 'inherent right' the purpose of the article was not to restrict the pre-existing customary right only to cases of armed attack, but rather to supplement it, and to make it clear that it would *definitely* apply when an armed attack occurred. It has therefore been suggested that an armed attack may be only one of several circumstances under which action in self defence could lawfully be taken⁴⁸⁸.

It has also been claimed that Article 51 allows the use of force when it does not threaten the "territorial integrity" or "political independence" of the state attacked, and/or when it is in accord with the aims of the United Nations as noted within the vague article 2(4). In relation to the assessment made within this thesis it is worth noting that there is a dispute as to whether the goal of the P.L.O. was ever the "violent

U.N. Security Resolutions on the issue of Israeli incursions into Lebanon in response to *fedayeen* attacks between 1968-78, Levenfeld concluded that: "[t]he message of the Security Council in dealing with Israeli exercises of its alleged right of self-defense or reprisal is clear: they are completely unlawful. No amount of *fedayeen* activity can justify the resort by Israel to armed force since *fedayeen* activities do not constitute armed attacks" Levenfeld B. 'Israel's Counter-Fedayeen Tactics in Lebanon; Self-Defense and Reprisal Under Modern International Law'. *Columbia Journal of Transnational Law*. Vol. 21. (1) 1982. pp1-48.p19 Levenfeld also noted that, "[i]n the decade from 1968 to 1978, the specific question of Israeli counter-*fedayeen* activities directed at Lebanon was the subject of eleven Security council resolutions. These eleven resolutions condemn israel for violating the territorial integrity of Lebanon or for engaging in forbidden military reprisals'.Levenfeld B. 'Israel's Counter-Fedayeen Tactics in Lebanon; Self-Defense and Reprisal Under Modern International Law'. *Columbia Journal of Transnational Law*. Vol. 21. (1) 1982. pp1-48. p17. O'Brien complained that, "[f]or those for whom international law is deduced from the resolutions of organizations like the Security Council and the official pronouncements of states, Israel's 1982 Lebanon war was not a permissible exercise of the rights of self defence". O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p145.

⁴⁸⁷ Brownlie 'International Law and the Activities of Armed Bands' *International and Comparative Law Quarterly*. Vol 7. 1958. p731 cited by Levenfeld B. 'Israel's Counter-Fedayeen Tactics in Lebanon; Self-Defense and Reprisal Under Modern International Law'. *Columbia Journal of Transnational Law*. Vol. 21. (1) 1982. pp1-48. p16.

⁴⁸⁸ Arend and Beck cite Moore (no initial given). 'The Secret War in Latin America and the future of World Order. *American Journal of International Law*. Vol. 80 (1986). p23, 82-83. Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.). p36.

overthrow" of Israel⁴⁸⁹. With this last point in mind, it easy to see how some authors have claimed that the use of force to achieve human rights is not illegal under the Charter. Such a conceptual leap is aided by those such as Tésou who have claimed that "the promotion of human rights is as important a purpose in the Charter as is the control of international conflict" ⁴⁹⁰. A view which relies on the fact that fact that Article 56 of the Charter states that:

"All Members pledge themselves to take joint and separate action in cooperation with the Organisation for the achievement of the purposes set forth in Article 55."

This latter article repeated the demand that the UN, shall promote "universal respect for and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion". Other developments which can be seen as supporting this interpretation, is the fact that the United Nations has legitimised the use of force by non-state actors in order to achieve self determination⁴⁹¹, which has been accorded the status of a human right, and the even stronger legal claim that the U.N. has outlawed the use of force by states against those who seek to achieve self-determination⁴⁹².

⁴⁸⁹ Levenfeld B. 'Israel's Counter-Fedayeen Tactics in Lebanon; Self-Defense and Reprisal Under Modern International Law'. *Columbia Journal of Transnational Law*. Vol. 21. (1) 1982. pp1-48. p7.

⁴⁹⁰ Tésou F. Humanitarian Intervention 5. 1988. p5.Cited by Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.). p131.

⁴⁹¹ A conclusion shared even by authors of mainstream Western textbooks on international law, including Akehurst who wrote that there is "general agreement that peoples who have a legal right to self-determination are entitled to fight a war of national liberation". Akehurst M. *A Modern Introduction to International Law* (6th Ed. London. Routledge. 1991.). p 299. For details of the debate see Sproat P.A. 'The United Nations' Encouragement of Aggression and Ethnic Cleansing: Time to Abandon the Right to Self- Determination?'. *Terrorism and Political Violence*. Vol 8.(1). Spring 1996. pp93-113 generally.

⁴⁹² De Lupis for example claimed that "the rule of self-determination which undoubtedly furnishes a legal title for resisting (but not starting to employ) use of force in contemporary international society. Naturally, it is difficult to determine when and who 'starts' to use force. But, if it is a 'clear' question of 'second' use, it may be legitimised under modern international law, not as self-defence but under the heading of self determination". De Lupis I.D. *The Laws of War* (Cambridge. Cambridge University Press. 1987) p83 cited by Sproat P.A. 'The United Nations' Encouragement of Aggression and Ethnic Cleansing: Time to Abandon the Right to Self- Determination?'. *Terrorism and Political Violence*. Vol 8.(1). Spring 1996. pp93-113. Ftn. 37, p98.

In regards to the second question raised by Arend and Beck, there are unsolved disputes about the nature of the response allowed to acts of international terrorism. The first is the issues of 'time' in regards to one's response. The main question being 'Does a (would-be victim) State have to wait for the other side to actually strike first before it can defend itself?'. In line with this many authors challenged the traditional interpretation of self defence given by Webster the then U.S. Secretary of State for Defence's remarks over the 'Caroline' incident which demanded that it must be "instant, over-whelming, and leave no choice of means, and no moment of deliberation"⁴⁹³, by promoting the ideas of 'pre-emptive' strikes or controversially biding one's time in responding, a view used to justify the US 'counter-terrorist' raid on Libya in 1986. This brings the issue back to the not unrelated issue of 'What constitutes 'aggression?'. An issue not helped by the contradictions contained within the Declaration on Aggression also included within his definition of state terrorism by Blischenko. Most notably Article 7 of which stated that none of those acts listed as examples of acts of aggression within article 3:

"could in any way prejudice the right to self determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration of Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the charter of the United Nations, particularly peoples under colonial and racist regimes or other forms of alien domination; nor the right of those peoples to *struggle* to that end and to seek and receive support in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration"⁴⁹⁴.

⁴⁹³ Daniel Webster said to the British Foreign Secretary that Britain would have to show that the "necessity of self-defence is instant, over-whelming, and leave no choice of means, and no moment of deliberation". Moore J. *The Caroline Digest of International Law*. 2: 412. (1906), cited by Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.). p18.

⁴⁹⁴ Sproat P.A. 'The United Nations' Encouragement of Aggression and Ethnic Cleansing: Time to Abandon the Right to Self- Determination?'. *Terrorism and Political Violence*. Vol 8.(1). Spring 1996. pp93-113. p99. Wilson claimed that the U.N. deliberately chose the ambiguous term struggle to allow it to be passed unopposed. Although she also notes that the debates on the resolution reveal that most members of the Assembly understood the resolution as referring to armed struggle. Wilson H.A. *International Law and The Use of Force by National Liberation Movements* (Oxford. Clarendon Press. 1988) p99. One author who takes this view is Pekane who claimed that "Recognition of the legitimacy of the struggle for self-determination...amounts to

Secondly there are questions in relation to the issue of 'How may a state lawfully use force within the international arena?' which must be solved, and although publicists have generally agreed that a victim state's use of force must be 'proportionate', they have failed to agree on how 'proportionality' should properly be calculated⁴⁹⁵. For example in an article on the American bombing of Libya, Intoccia wrote that any response to an act of aggression which employs a level of violence "which is greater than is necessary to counter any *continuing immediate threat* must be viewed as impermissible" under international law⁴⁹⁶. In contrast to this minimalist view of proportionality, Roberts wrote in an article on combating state supported terrorism that proportionality can be calculated on the basis of *prior* events. Therefore, "an accumulation of small events, such as minor terrorist attacks, can justify a single larger retaliatory response in certain instances"⁴⁹⁷. Others such as Schachter have said that:

"If proportionality consists of a reasonable relation of means to ends, it would not be disproportionate if in some cases the retaliatory force exceeded the original attack in order to serve its deterrent aim. One might say that the force would have to be sufficient to cause the terrorist to change his expectations about costs and benefits so he would cease terrorist activity."⁴⁹⁸

recognising the legality of the use of force by these [National Liberation] Movements". Pekane T.S. 'Reflections on Apartheid and the Legal Status of National Liberation Movements' in Ginther K. and Benedex W. (eds) *New Perspectives and Conceptions of International Law* (Springer-Verlag. Wien.1983.). pp181-185. p184. See Sproat P.A. 'The United Nations' Encouragement of Aggression and Ethnic Cleansing: Time to Abandon the Right to Self- Determination?'. *Terrorism and Political Violence*. Vol 8.(1). Spring 1996. pp93-113. p100 and 98 respectively.

⁴⁹⁵ Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.). p165.

⁴⁹⁶ Intoccia G. 'American Bombing of Libya'. *Case Western Reserve Journal of International Law*. Vol. 19. (1987). p206 cited by Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.). p165.

⁴⁹⁷ Roberts G. 'Self Help in Combatting State Sponsored Terrorism' *Case Western Reserve Journal of International Law* Vol. 19. (1987). (no page reference given), cited by Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.). p165.

⁴⁹⁸ Schachter O. 'The Right of States to Use Armed Force', *Michigan Law Review*. Vol. 82. (1984.). p1620 1637 cited by Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.). p166.

This view was echoed by William O'Brien who claimed that proportionality could be judged in terms of the total context of hostilities including the broad political-military strategic context. Thus O'Brien could write: "counter-terror measures should be proportionate to the purposes of counter-terror deterrence and defense"⁴⁹⁹. Hence, the "referent of proportionality" should be "the overall pattern of past and *projected* acts"⁵⁰⁰. As for who or what can constitute a legitimate target that will be discussed in the next chapter.

⁴⁹⁹ O'Brien W. 'Reprisals, Deterrence and Self-Defence' in Counter-terror Operations' Va. J. Int. Law (1990). p477, cited by Arend A.C. and Beck R.J. *International Law and the Use of Force Beyond the UN Charter Paradigm*. (Routledge. London. 1993.). p166.

⁵⁰⁰ O'Brien W. 'Reprisals, Deterrence and Self-Defence' in Counter-terror Operations' Va. J. Int. Law (1990).p472, cited by Arend A.C. and Beck R.J. *International Law and the Use of Force Beyond the UN Charter Paradigm*. (Routledge. London. 1993.). p166.

A Legalistic Attempt: Conclusion

The legalistic approach to identifying the concept of state terrorism, has been rejected for various reasons. The first is that no legal body has yet to produce a crime of state terrorism, although it has been suggested that state terrorism is already covered in some way by international humanitarian law. The second is that even when authors have incorporated pieces of international humanitarian law within their definitions, they produce very long definitions. In addition the incorporation of those which contained 'positive rights' would mean that a state could be labelled as terrorist for not doing something (a sin of omission). Thirdly and perhaps more importantly there is the question of why incorporate it. This author can see the appeal of using one global standard but the reality of international law is far less straightforward as it may first appear. Not only are there questions of whether an international legal system can be said to exist, and the problems of identifying international law and what they mean in practice, but as a whole its contents are at best elusive, at worst contradictory, due to the *ad hoc* and political nature of the international law production process. This latter point was illustrated by this section's examination of the contemporary legal regime pertaining to the use of force by states outside their own area of domestic jurisdiction. Thus even if one was to identify a legal system there are tremendous problems facing those who would like to equate state terrorism with some coherent set of legal violations.

This said, it does not mean that the process was not worth while for the examination has undoubtedly provided insights not only on what cannot constitute state terrorism but also provides ideas for what might be included within a definition of state terrorism. It is in this sense that the author believes that one can produce a definition of international law which will find itself supported by elements or norms found within international law. This thesis will attempt to do this *via* an analytical approach.

An Analytical Attempt.

Crime.

The first question to be asked in this analytical attempt to define terrorism is: 'Should the notion of terrorism incorporate that of crime?'. At first there appears to be a strong case for doing so. This author would go as far as suggesting that the vast majority of acts of terrorism, be they 'from above' or 'below', are criminal in terms of the domestic laws of the country in which they take place. Other authors go further in suggesting that: "terrorism = crime plus something else". For example in reply to this author's questionnaire Woy-Hazelton wrote: "I'd say all illegal acts of violence are terrorism"⁵⁰¹, whilst the U.S. National Advisory Committee on Criminal Justice Standards and Goals declared that:

"Political terrorism is characterized by, (1) its violent, criminal nature; (2) its impersonal frame of reference; and (3) the primacy of its ulterior objective, which is the dissemination of fear throughout the community for political ends or purposes"⁵⁰².

Moreover, although the word "criminal" was mentioned in a surprisingly low 6% of the definitions recorded by Schmid, the idea of terrorism as crime, constitutes the foundation of many works on the topic, and therefore numerous definitions of terrorism, even if some of the terrorologists are not aware of this. This crime approach to the concept of terrorism captures a good deal of ordinary thinking about terrorism, partly because it derives from the position of Western governments, who prefer to say that they treat the terrorists as

⁵⁰¹ S. Woy-Hazelton in reply to question 10.

⁵⁰² U.S. National Advisory Committee on Criminal Justice Standards and Goals. *Report of the Task force on Disorders and Terrorism*. (GPO. Washington. D.C. . 1976.). See also Gibbs' long definition. Gibbs J.P. 'Conceptualization of Terrorism'. *American Sociological Review*. Vol. 54. 1989. pp329-340. p331.

criminals rather than as political prisoners⁵⁰³, soldiers or even war criminals.

Yet despite this author's sympathy towards this approach, the notion of 'crime', however worded, is not considered to be an essential part of a definition of terrorism, primarily because the inclusion of it, or elements of legality, adds little, except perhaps confusion (although this is not to say that legality might not have some sort of role in a definition of state terrorism). This reasoning is perhaps at its strongest when attempting to define the State side of political terrorism. As noted within the previous chapter no legal body has yet to produce a crime of state terrorism, nor is there likely to be one. Moreover the State can quite easily legalise acts of state terrorism committed within its area of jurisdiction⁵⁰⁴, including the actions of particular pro-state groups. Historical and contemporary practice also shows that states often except from prosecution or extradition the perpetrators of 'criminal' actions if they approve of their cause when the terrorists actions are illegal⁵⁰⁵.

In terms of insurgency terrorism, only a small number of states have created a crime of terrorism, and there is significant variation in those definitions produced, indeed it is not unknown for different departments of an individual state to use different definitions for the production of their policy documents⁵⁰⁶. Therefore if this element of legality was included, it would mean that one's definition of terrorism would vary from state to state in accordance with its own definition of terrorism (or crime), and if it were the former, acts of terrorism could not exist in those nations which have yet to produce a legal definition of the term.

⁵⁰³ After Gilbert, although he terms it a "political crime model". Gilbert P. *Terrorism, Security and Nationality: An Introductory Study in Applied Political Philosophy*. (Routledge. London. 1994.).p50

⁵⁰⁴ R. Crelinsten in reply to question 9 wrote "Much of Soviet and Nazi law permitted acts of terrorism". See also section on The State.

⁵⁰⁵ For example the privileges enjoyed by persons exiled to Siberia by the Tsar of Russia, political offenders including Adolf Hitler in Weimar Germany, and the contemporary practice of presidential pardons..

⁵⁰⁶ See for example the 10 definitions used by the various U.S. governmental departments, listed in Appendix B by Schmid A.P. and Jongman A.J. *Political Terrorism: A new guide to actions, authors, concepts and databases*. (SWIDOC. Amsterdam. 1988.).p32-33

One could of course look to international law to provide the solution to this latter problem, for this would also have the added advantage of being able -at least theoretically- to deal with the actions of the State committed outside its area of jurisdiction, which reference to national laws cannot. Unfortunately as the last chapter revealed there are a great number of problems that are inherent within any incorporation of international law into a definition of terrorism. Not only has international law failed to define the term 'terrorism', but it has yet to produce an universally recognised criminal court, never mind a world police to enforce international law. International law is also full of contradictions and even when authors have incorporated pieces of international humanitarian law within their definitions, they produce very long definitions, some of which mean that a state could be labelled as terrorist for not doing something (a sin of omission) because international law often contains 'positive rights'. Moreover if the international law relating to both the use of force abroad and to human rights within a nation were to be the standard by which one would measure state terrorism, one would face another decision as to which international law one was to incorporate. In this case one based on the concept of time. For example if one wanted to compare the Nazi's use of state terrorism with that of a contemporary regime, from which era would one take the international law by which one would produce a model of state terrorism? (and why?). That is, a definition of state terrorism based upon today's international law would differ greatly from that based on the international law of the 1930s and 1940s when state terrorism was rife in Germany and the Soviet Union.

After rejecting the incorporation of crime (or legality) into one's model of terrorism, the chapter goes on to examine the relationship between terrorism and another element in Schmid's list, that of violence. The immediate question to be addressed within the thesis is 'Does terrorism equal violence?' and if not: 'How can one distinguish violence from terrorism?'

Violence and Terrorism.

In his work on defining the term 'terrorism' Schmid noted that there is hardly a definition of terrorism where the definiens (i.e. the right hand side of the equation 'terrorism=') does not contain the word violence⁵⁰⁷. Indeed it has been said that there is little prospect of coming to a satisfactory definition of terrorism without the inclusion of this word. The former claim can be seen to be backed up by statistics in that the word violence was the most frequently cited element in the 109 definitions of terrorism identified by Schmid, and was found in 83.5% of them⁵⁰⁸. It is therefore not a surprise that this thesis concurs with the view that in order to define terrorism it is necessary to include the term violence and to define it⁵⁰⁹. Therefore the immediate question that this thesis must address is 'What is violence?'.

Unfortunately there is no clearly demarcated, widely accepted concept of violence⁵¹⁰. For Schlesinger the author of this last sentence, the word 'violence' -like that of 'terrorism'- is a contested term of political discourse with many meanings and conjures up a variety of image⁵¹¹. Such a view can be seen to be supported by Van der Dennen's work *Problems in the Concept and Definition of Aggression, Violence and Some Related Terms* which listed 48 definitions of the term⁵¹². Van Der

⁵⁰⁷ Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland. Amsterdam. 1984.). p11.

⁵⁰⁸ Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland. Amsterdam. 1984.). Table 5. p76-77.

⁵⁰⁹ Second part of the sentence is referenced to Karanovic M. 'The Concept of Terrorism' in Kravitz M. (ed). *International Seminars: A Collection of Selected Translation in Law Enforcement and Criminal Justice. Vol 3.* (National Criminal Justice Reference Service. US Department of Justice Law Enforcement Assistance Administration. National Institute of Law Enforcement and Criminal Justice. April 1979). pp81-89. p85.

⁵¹⁰ Schlesinger P. *Media, State and Nation: Political Violence and Collective Identities.* (Sage. London. 1991.).p5. Similarly Gregor wrote, "there seems to be considerable conceptual disorder surrounding the entire problem of human violence, in general, and the problem of terrorism in particular". Gregor A.J. 'Some Thoughts on State and Rebel Terror' in Rapoport D.C. and Alexander Y. *The Rationalization of Terrorism.* (University Publications of America. Frederick MD. 1982). pp56-79). p57.

⁵¹¹ Schlesinger P. *Media, State and Nation: Political Violence and Collective Identities.* (Sage. London. 1991.).p1. Also Newman G. *Understanding Violence.* (J.B. Lippincott Co. London. 1979.). p1.

⁵¹² Van Der Dennen M.G. *Problems in the Concept and Definition of Aggression, Violence and Some Related Terms.* (Polemological Institute. Gronigen. 1980.). p117-121.

Dennen also usefully noted that many of the definitional problems that plague analysts of terrorism also blight those who attempt to define violence. For him the word 'violence':

"has been defined in terms of force, coercive power, authority, (il)legitimacy. It has been defined in terms of behaviour, motives, intentions....violation of territorial or spatial integrity, moral and legal integrity, violation of rules and expectations, even violation of self-esteem, dignity, autonomy....The term has been used to blame, to indicate disapproval....to inflame passions, to mobilize support, to define the guilty party, to justify and condone our own actions. Violence is mostly what others do. Violence, like beauty, is very much in the eye of the beholder"⁵¹³.

Similarly Skolnick, in a sentence that was also reminiscent of the debates explaining the marginalisation of state terrorism, complained that:

"The kinds of acts that become classified as "violent" and equally important those which do not become so classified, vary according to who provides the definition and who has superior resources for disseminating and enforcing his definition"⁵¹⁴.

These disagreements over the definition of the term 'violence' could be the results of political intrigue, alternatively they may simply be the result of the two different perspectives on the origins of the word. For Wilkins:

"violence is the combination of two Latin words, *vis* and *latus* 'force' and 'carried'. From this, it would seem that the important thing about violence is that it is *force* plus something else and this something else has to do with the *way* that force is carried or applied"⁵¹⁵.

⁵¹³ Van Der Dennen M.G. *Problems in the Concept and Definition of Aggression, Violence and Some Related Terms*. (Polemological Institute. Gronigen. 1980.). p59.

⁵¹⁴ Skolnick J.M. (ed.). *The Politics of Protest* (Simon and Schuster. New York. 1969.). p4. in Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland. Amsterdam. 1984.). p14.

⁵¹⁵ Wilkins B T. *Terrorism and Collective Responsibility*. (Routledge. London. 1992.). p53.

Newman also acknowledged that definition of violence whose root is *violenta* (physical force), although he preferred to use the term as derived from the Latin root *violatio* which means 'violation' - as he saw it of rights⁵¹⁶. This etymology might help explain how opponents of constituted authority tend to use a broader definition of violence (and politics), whilst those who would defend the constituted authority tend to produce definitions that restrict violence to those uses of physical force which are prohibited by a normative order presumed to be legitimate, usually the law of a state. Whatever, the use of such physical violence or force by authorities is usually viewed as social control, law enforcement or the preservation of order or conflict management⁵¹⁷. The thesis however, rejects the widely held view of violence that attempts to confine the word solely to acts committed by insurgents, or to illegal acts with authorities' violence being termed 'force', including that of Dinstein who defined violence as "the unlawful exercise of physical force"⁵¹⁸ (although in regards to the use of violence within its area of jurisdiction this author's definition produces very similar results). Similarly the thesis does not accept the assumption pointed to by authors such as C.C.O'Brien that democracy and violence somehow conflict⁵¹⁹. On the other hand, it also rejects definitions such as Galtung's, which label anything which prevents the individual's somatic and mental potential being reached as 'structural violence' or 'psychological violence'. Such definitions embrace far too much to be useful, making it difficult to distinguish violence (and therefore terrorism) from any other thing involving any avoidable suffering!⁵²⁰

⁵¹⁶ Newman G. *Understanding Violence*. (J.B. Lippincott Co. London. 1979.). p3.

⁵¹⁷ Nardin I. *Violence and the State* (Sage. Beverly Hills. 1971.).p13 cited in Synder D. 'Theoretical and Methodological Problems in the Analysis of Governmental Coercion and Collective Violence' *Journal of Political and Military Sociology* Vol 4. Fall. 1976. pp277-293. p283.

⁵¹⁸ Reply of Dinstein Y. to Schmid's questionnaire Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (Amsterdam. North Holland. 1984.).p12. See also that of Macfarlane who defined violence as "the capacity to impose, or the act of imposing one's will upon another, where the imposition is held to be illegitimate". MacFarlane L.J. *Violence and The State*. (Thomas Nelson. London. 1974.). p46.

⁵¹⁹ C.C.O'Brien for example wrote, "the force used by a democratic state is legitimate while the violence of the terrorist is not legitimate". Written in answer to Schmid's question "When do you label the use of violence legitimate". Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland. Amsterdam. 1984.). p32.

⁵²⁰ Schmid cites Galtung J. 'On Violence in General and Terrorism in Particular' Geneva Unitar.1978. (unpublished paper). p1. Schmid A.P. *Political Terrorism: A*

Instead the thesis will accept the view of violence that is related to the use of physical force, although it is not one that distinguishes between the two *apriori* on grounds of 'right authority' or the ends to be achieved by its use.

However despite Van Der Dennen's claim that the majority of interpretations of violence adopt a definition in terms of physical force⁵²¹, the matter of defining violence is still far from clear cut. Wilkins, for example, has argued that acts of violence should refer only to acts that involve harm or injuries which are in no way consented to, or allowed under the rules of some game. To which he added that what counts as an act of violence is not, to be determined solely on behavioural evidence but is context dependent⁵²². For only in this manner could one accept the more limited version of violence as the "intentional rupture of human body tissues for non-surgical purposes"⁵²³. However such a definition would be considered too narrow for the purposes of the definition of terrorism because it does not allow for violent attacks upon property. Instead this thesis generally accepts Van Den Haag's definition of violence as a working proposition. A definition which allows for the use of violence in the acquisition or exercise of power and in order to challenge authority or to enforce it. Van Den Haag defined violence as:

"physical force used by a person, directly or through a weapon to hurt, destroy or control another, or to damage, destroy, or control an object (e.g. territory or property)."⁵²⁴

It may of course be possible to produce a better definition of violence if one were to devote far more time to examining the finer detail in terms of one's rights and the context of the violence, but that could be a thesis

Research Guide to Concepts, Theories, Data Bases and Literature (Amsterdam. North Holland. 1984.). p13.

521 Van Der Dennen .M.G. *Problems in the Concept and Definition of Aggression, Violence and Some Related Terms*. (Polemological Institute. Gronigen. 1980.). p68.

522 Wilkins B T. *Terrorism and Collective Responsibility*. (Routledge. London. 1992.). p61.

523 Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (Amsterdam. North Holland. 1984.). p15.

524 Van Den Haag E.. *Political Violence and Civil Disobedience* (Harper Row. New York. 1972.). p54. Cited by Bauhn P. *Ethical Aspects of Political Terrorism*. (Lund University Press. Lund, Sweden. 1989.). p33.

in itself. Van Der Dennen, for example, wrote more than an hundred pages on the issue and his work is not the only book produced on the topic. However rather than produce a number of doctorate length investigations of each of the 22 terms that are under consideration for their inclusion within the equation 'terrorism =', this thesis attempts merely to investigate each in order to decide whether or not to include it, and to produce a 'working definition' of any of the elements included within this author's terrorism equation. As long as one incorporates a 'physical force' definition which allows for violence against both persons and property⁵²⁵, and one applies it consistently to the acts of all terrorist actors, then the exact nature of the definition does not matter here, since the aim of this thesis is to produce a definition of terrorism equally applicable to the violence of both insurgent and state.

After defining violence in this way the immediate question to be answered becomes: 'Does terrorism = violence?'. To some observers almost any act of violence may be included in the rubric of terrorism. Such a conclusion is possible if one accepts the logic of Levy and Ross who noted that: "[e]very act of violence contains some degree of terror, of extreme anxiety or fear"⁵²⁶.

The view that 'terrorism = violence' is of course far too broad, as the reader will soon discover, yet in another sense it is far too narrow, in that such an equation excludes those often very successful acts of terrorism which do not involve the *use* of violence, they merely involve the use of a threat of violence. It is therefore necessary to include this element within any definition of terrorism. So from now on when the word violence is used in relation to this author's definition, it will automatically be assumed to include the threat of such violence. This proviso is necessary in order to avoid the clumsy repetition within each relevant sentence of the fact that the threat of such violence is sufficient.

⁵²⁵ Teichman for example took the opposite view, she claimed that "[d]estruction of property is not terrorism unless it is a precursor of a different kind of action i.e. part of a campaign, which includes physically harming human beings". Teichman J. 'How to Define Terrorism'. *Philosophy*. Vol. 64. 1989. pp505-517. p512.

⁵²⁶ Levy J. and Ross P. 'The State of Political Violence in Latin America'. *Australian Quarterly*. Vol.58. (3).1987. p269-277. p269.

The Threat of Violence

The element "threat" was noted within 47% of the 109 definitions identified by Schmid and was the fourth most frequently cited element within his list⁵²⁷. However whilst it may be true that all terrorism is necessarily violent (or at least involves the threat of violence), not all violence (or threat of it) is necessarily terrorism⁵²⁸. The immediate question to be answered becomes: 'What distinguishes terrorism from other forms of violence?'. Weisband and Rogely have claimed that: "violence in order to be terrorism must be political"⁵²⁹, for it enables a distinction between terrorism and similar activities undertaken by mafioso-type criminals purely for personal or private gain⁵³⁰. Likewise Hocking noted that descriptions of terrorism which do not consider it as primarily a political phenomenon are unable to provide a satisfactory means of distinguishing between terrorism and other crime, or between the terrorist and the psychopath⁵³¹. Yet not all authors agree with the view that terrorism must be politically motivated. Both Clutterbuck and Wilkinson for example have both noted that criminals have used it to obtain ransom and other forms of private gain, whilst psychopaths have terrified others from motives that even they may not fully understand.⁵³² This situation is complicated both by the fact that

⁵²⁷ Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature*. (North Holland. Amsterdam. 1984.). p76-77.

⁵²⁸ After Quinton, although Quinton does not use the idea of a threat. Quinton A. 'Reflections on Terrorism and Violence' in Warner M. and Crisp R. (eds.) *Terrorism, Power and Protest*. (Edward Elgar. Aldershot. 1990.). pp35-43. p35.

⁵²⁹ Weisband E. and Rogelby D. 'Palestinian Terrorism: Violence, Verbal Strategy, and Legitimacy' in Alexander Y. (ed). *Terrorism, International, National, Regional and Global Perspectives*. (Praeger. New York. 1976.) cited without page reference in Thackrah J.R. *The Encyclopedia of Terrorism and Political Violence*. (Routledge, Kegan and Paul. London. 1987.). p60

⁵³⁰ Weisband E. and Rogelby D. 'Palestinian terrorism: Violence, Verbal Strategy, and Legitimacy' in Alexander Y. (ed). *Terrorism, International, National, Regional and Global Perspectives*. (Praeger. New York. 1976.) cited without page reference in Thackrah J.R. *The Encyclopedia of Terrorism and Political Violence*. (Routledge, Kegan and Paul. London. 1987.). p60.

⁵³¹ Hocking J. 'Orthodox Theories of Terrorism': the Power of Politicised Terminology'. *Politics* (Sidney). Nov. 1984. pp 103-110. p105. See also Quinton who wrote "terrorism is violence directed towards a public or social end rather than to a private or personal one or, *a fortiori*, to no end at all beyond the act itself". Quinton A. 'Reflections on Terrorism and Violence' in Warner M. and Crisp R. (eds.) *Terrorism, Power and Protest*. (Edward Elgar. Aldershot. 1990.). pp35-43. p36.

criminals and psychopaths sometimes justify their actions using political slogans and by the propensity of terrorist movement to recruit assistance from, and to collaborate with, the criminal underworld⁵³³. It has also been noted that political groups sometimes degenerate into criminal gangs retaining no more than a facade of a political cause and only the remnants, if any, of allegiance to their political party.⁵³⁴ Indeed these problems can also be seen to affect the violence of individual states, for without doubt some statesmen and women have been psychopaths, many have been corrupt and some have personally benefited, among with other members of their class, from the uncorrupted political system which they govern.

Clutterbuck and Wilkinson's conception of terrorism as a wider phenomenon can be seen to be found within Schmid and De Graaf's three part typology that separated the topic of terrorism *per se* into these various types⁵³⁵, and they are also implicit in Hacker's book which was entitled *Crazies, Crusaders and Criminals* ⁵³⁶. However for the purpose of this doctorate in politics such a typology is rejected, for it raises too many problems for the political analyst. To include violence undertaken for purely 'private' or 'psychological' reasons would be to over extend the concept so that it almost became meaningless as a tool of political analysis. That is it would become very difficult, if not impossible, to distinguish terrorism from many (if not most other) forms of violence, for as noted earlier every act of violence contains some degree of terror, or extreme anxiety or fear⁵³⁷. The requirement

532 Wilkinson P. *Terrorism and the Liberal State*. (2nd ed. Macmillan. London. 1986.).p51 and Clutterbuck R. *Kidnap and Ransom:The Response*. p5 cited by Hoffman R.P. *Terrorism A Universal Definition* (Claremont Graduate School. Ph.D. 1984). p4.

533 Wilkinson P. *Terrorism and the Liberal State*. (2nd ed. Macmillan. London. 1986.). p51.

534 Clutterbuck R. *Kidnap, Hijack and Extortion: The Response*. (Macmillan. Basingstoke. 1987.). p6.

535 See Schmid A.P. and Jongman A.J. *Political Terrorism: A new guide to actions, authors, concepts and databases*. (SWIDOC. Amsterdam. 1988.).Table 1.6 .p48. Crelinsten in reply to question 12 wrote "I know most people think of terrorism as "political", but, again, a universal definition must (I believe) take an almost behavioural/istic approach. Why exclude the Mafia, "narcoterrorism", much criminal gang activity, and even much domestic violence. All these have political ramifications too! "

536 Hacker. J. *Crazies, Crusaders and Criminals: Terror and Terrorism in Our Time* (Norton. New York. 1986.).

537 Levy J. and Ross P.'The State of Political Violence in Latin America'. *Australian Quarterly*. 1987. Vol.58. (3). p269.

of political motivation is therefore accepted by this author, and it is a view which is accepted by the majority of the specialists in the field⁵³⁸. This latter claim, made by both Crenshaw and R.P. Hoffman, can be seen to be supported by the statistics provided by Schmid's content analysis of the 109 definitions. Schmid's list reveals that the term "political" was found within 65% of the definitions, and it constituted the second most frequently cited element of the twenty-two in Schmid's list⁵³⁹.

⁵³⁸ Crenshaw M. 'Current Research on Terrorism: The Academic Perspective'. *Studies in Conflict and Terrorism*. Vol.15(1).1992. pp1-11.p1. and Hoffman R.P. *Terrorism A Universal Definition* . Claremont Graduate School. Ph.D. 1984. p14.

⁵³⁹ Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland. Amsterdam. 1984.). Table 5. p76-77.

Political (Violence).

As a result of this author's decision to include 'political' within the equation "terrorism =", the immediate question that this thesis must address is: 'What do we mean by political?', or at least 'What do we mean by political violence?'. Unfortunately as this last sentence implies there is even a lack of consensus as to whether here one is examining two words, that is, political and violence, or one term, that is, 'political violence', never mind the meaning of each in this context.

Just as there is a lack of agreement about the term 'violence', consensus exists in the use of the term 'political'. For Schmid the "semantic range" of the word politics is "extremely broad"⁵⁴⁰ and he notes that even within the area of political science the term 'politics' is usually defined in terms of one or more of the following be it policy, power, the State, conflict or allocation of resources⁵⁴¹. Whilst in reference to the phrase 'political violence'. Crenshaw similarly noted:

"Disagreement over defining terms a major impediment to the development of research on terrorism, is not unique to terrorism. The concept of political violence is inherently ambiguous and its usage can be extremely arbitrary"⁵⁴².

Thus within the area of 'sexual politics' it has been claimed that domestic violence constitutes a form of political violence, the logic of which means that the 'personal is political'. Similarly it is not uncommon to hear radicals claim that everything is 'political' and that those who declare themselves to be 'apolitical' are really declaring themselves to be politically 'conservative' for they are happy with the status quo. This thesis will reject these wider interpretations and concentrate on the 'traditional' liberal view of 'political' as in the

⁵⁴⁰ Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (Amsterdam. North Holland. 1984.). p20.

⁵⁴¹ He writes this with reference to Hoogerwoef A. *Politologie. Begrippen en problemen* (Alphen a.d. Rijn. Samson. 1979). p39. Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland. Amsterdam. 1984.). p20.

⁵⁴² Crenshaw M. 'Current Research on Terrorism: The Academic Perspective'. *Studies in Conflict and Terrorism*. Vol.15(1).1992. pp1-11. p2.

distinction between state and civil society within non 'totalitarian' states. Thus it will accept the Amnesty International definition:

"A political act can be defined as an act in as much as it is directed at the furthering of changes in current laws or existing governmental policy. The defence of a current law or current governmental policy is also a political act"⁵⁴³.

Here it should be made clear that this is taken to include the transnational political violence that occurs within the international system of states. This is crucial because without this distinction, one would be excluding *apriori*, that political violence which would otherwise be called international or transnational terrorism (never mind that which occurs between states). To accept any definition as referring only to violence that occurs within the State or is internal to the polity would be to fall into the trap in which apparently most of the macroquantative literature has apparently fallen⁵⁴⁴.

Moreover it should be made clear that it is not merely that the actor is politically motivated, the act of violence must be carried out to achieve a political goal. This criteria enables the analyst to exclude the violence committed by nominally political organisations when they degenerate into criminal gangs retaining no more than a facade of a political cause, and only the remnants of an allegiance to their political party, as Clutterbuck and Wilkinson asserted⁵⁴⁵. It also excludes the use of violence to achieve other goals such as fund raising, when political organisations resort to bank raids for example. This definition of politics also has the advantage of being able to label as terrorism those

⁵⁴³ Ruitenberg H. Politiek en Misdaad. Wardt Vervolgd. Berichten Van Amnesty International. 78. 6 June 1978. p3 cited by Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland. Amsterdam. 1984.). p26.

⁵⁴⁴ Van Der Dennen. M.G. *Problems in the Concept and Definition of Aggression, Violence and Some Related Terms*. (Polemological Institute. Gronigen. 1980.). p60. Van Der Dennen also notes that most discussions of political violence concentrate on violence 'from below' , i.e. violence against power structures ('insurgent' or 'partisan' violence), while ignoring the violence 'from above', the violence by power structures ('incumbent' violence)" Van Der Dennen. M.G. *Problems in the Concept and Definition of Aggression, Violence and Some Related Terms*. (Polemological Institute. Gronigen. 1980.).p70. He goes on to suggest that "[p]erhaps the preoccupation with violence against power structures is due to its sporadic, aberrational nature, as opposed to the ubiquitous repression of the state, which is largely taken for granted?". p71.

⁵⁴⁵ Clutterbuck R. *Kidnap, Hijack and Extortion: The Response*. (Macmillan. Basingstoke. 1987.). p6.

acts of political violence carried out by those who belong to nominally social (single issue) or religious groups whose actions would otherwise be excluded. However yet again the most important issue is not the finer detail of this 'working definition' but an application of whatever definition of politics to all the potential actors.

At this stage of the sieving process it is necessary to ask the question: 'Are all acts of violence that aim to produce a political goal, acts of terrorism?'. The answer to which is 'no', primarily because such a definition would fail to distinguish acts of terrorism from other forms of violence that also fit the equation, including those that go by the name of war and war crimes, and even that riotous type of behaviour which occurs during rebellions and revolutions. So although terrorism involves the use, or threat, of political violence, not all political violence is in fact terrorism⁵⁴⁶. Political violence is a larger set that includes the sub-set terrorism along with many other sub-sets containing concepts such as acts of war, war crimes, and riotous behaviour, some of which may overlap on occasions with the sub-set terrorism.

It follows then that one would ask: 'How can one distinguish between those acts of political violence carried out in order to achieve a political goal that go by the name of 'terrorism' from these other politically motivated acts of violence?'. After all an analogy between war and terrorism has been made on a number of occasions. For example after citing Clausewitz's claims that war: "is an act of violence intended to compel our opponent to fulfil our will" and: "war is a mere continuance of policy by other means"⁵⁴⁷, and Mao-Tse-Tung's assertion that "[w]ar cannot for a single moment be separated from politics...politics is war without bloodshed, while war is politics with bloodshed"⁵⁴⁸, Taylor wrote:

⁵⁴⁶After Thackrah, although he didn't include the term threat. Thackrah J.R. *The Encyclopedia of Terrorism and Political Violence*. (Routledge, Kegan and Paul. London. 1987.). p57.

⁵⁴⁷ Clausewitz C Von. *On War*. (Trans. J. Graham. Penguin Books. Harmondsworth. 1968.) cited without page reference by Taylor M. *The Terrorist*. (Brassey's Defence Publishers. London. 1988.). p62.

⁵⁴⁸ Mao-Tse-Tung *Selected Military Writings*. (Foreign Language Press. Peking. 1963.) cited without page reference by Taylor M. *The Terrorist*. (Brassey's Defence Publishers. London. 1988.). p62.

"terrorism is the explicit use of violence to further political ends and, by these accounts, so is warfare. Terrorism may be seen therefore, in these terms, as a form of warfare, and the rhetoric of the terrorist, which frequently seeks justification for acts of violence in terms of the logic of warfare, appears to be accurate at one level"⁵⁴⁹.

One place to look for an answer to the question is the concept of 'war' itself.

⁵⁴⁹ Taylor M. *The Terrorist*. (Brassey's Defence Publishers. London. 1988.). p62

Conceptions of War.

The term 'war' like the terms 'terrorism', 'violence' and 'politics' is the subject of much definitional dispute. Dinstein, a famous legal scholar noted that in ordinary conversation, press reports or literary publications the term 'war' is a flexible expression suitable for an illusion to any serious strife, struggle or campaign⁵⁵⁰. He also noted that even within his own field that of international law that there was: "no binding definition of war stamped with the *imprimatur* of a multi lateral convention of force"⁵⁵¹. Similarly Gibbs, after attempting to answer his own question: "How does terrorism necessarily differ, if at all, from conventional military operations in a war, civil war, or so called guerrilla warfare?", claimed that: "there are no clearly accepted definitions of conventional military operations, war, civil war and guerrilla warfare"⁵⁵²

For some authors, the notions of 'war', 'guerrilla warfare' and 'terrorism' can be distinguished from one another on grounds of the size of the forces involved. Lacquer for example claimed that: "[t]errorist groups in contrast to guerrilla units do not grow beyond a certain limit"⁵⁵³. Although within its ordinary usage the term 'guerrilla' (especially if prefixed with the word 'urban') has often been associated with the term 'terrorist' (if not used interchangeably)⁵⁵⁴. A view which can be seen in the work of Thornton whose table below shows both types existing at the base of an escalator of political violence.

550 Dinstein Y. *War, Aggression and Self Defence*. (Grotius Publications. Cambridge. 1988.). p7.

551 Dinstein Y. *War, Aggression and Self Defence*. (Grotius Publications. Cambridge. 1988.). p8.

552 Gibbs J.P. 'Conceptualization of Terrorism'. *American Sociological Review*. Vol. 54. 1989. pp329-340. p332.

553 Lacquer W. *Terrorism* (Weidenfeld and Nicolson. London. 1972.). p218.

554 See for example Halweg W. 'Are Urban Guerillas possible?' In Niezing J. (ed.) *Urban Guerilla: Studies in the Theory Strategy and Practice of Political Violence in Modern Society* (Rotterdam Univesrity Press. Rotterdam. 1974.) p12. Cited by Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (Amsterdam, North Holland. 1984.). p39-40.

	<u>Phase</u>	<u>Characteristics</u>
I	Preparatory	Previolent
II	Initial Violence	Terror
III	Expansion	Guerrilla Warfare
IV	Victorious	Conventional Warfare
V	Consolidation	Post Violent

It is easy to see how such views have arisen, since resorting to unconventional 'hit and run' tactics by both guerrillas and terrorists may be the result of the limited resources of a small armed force. For while they aim to become a conventional army (or even ultimately the state) that occupies territory, their immediate inferiority in terms of resources means that they are likely to capture mental, rather than physical, space or territory in the near future⁵⁵⁶.

Other authors have attempted to define 'war' according to a different concept of size. Rather than identifying war on the basis of the size of the organisations or forces involved it is possible to differentiate on the basis 'scale' and 'intensity' of the political violence. The latter for example can be deduced from the United Kingdom position on recent 'laws of war' treaties. On signing the first Geneva Protocol of 1977 the U.K. government added a proviso in which it insisted that "a certain level of intensity of military operations" must be present for it to apply the Protocols to a particular armed conflict⁵⁵⁷. The "certain level"

⁵⁵⁵ Thornton T.P. 'Terror as a Weapon of Political Agitation' in Eckstein H. (ed). *Internal War Problems and Approaches* .(The Free Press of Glencoe, Collier Macmillan. London. 1964.). pp71-100. p92.

⁵⁵⁶ After Wordemann *Terrorismus* (Piper. München. 1978.) cited by Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland. Amsterdam. 1984.). p43. [no initial].

⁵⁵⁷ See wording of reservation to first Geneva Protocol 1977. Cited by Roberts A. and Guelff R. (eds.). *Documents on the Laws of War*. (2nd. ed. Clarendon Press. Oxford. 1989.). p467. Interestingly the U.S.A. added a reservation which can be seen as capping the definition of armed conflict in that it stated that the U.S.A. did not consider "the rules established by this protocol were not intended to have any effect on and do not regulate or prohibit the use of nuclear weapons". Cited by Roberts A. and Guelff R. (eds.). *Documents on the Laws of War*. (2nd. ed. Clarendon Press. Oxford. 1989.). p468.

which they required was that contained within Article 1 of the second Geneva Protocol. It mentioned armed conflicts:

"which take place in the territory of a High Contracting Party between its armed force and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol".

Each type of size distinctions can be seen within De Lupis' definition of 'war' which was specifically designed to distinguishing it from terrorism (and riots) whilst fitting in with existing international law (including the right to self-determination). She claimed that war is:

"a *sustained* struggle by armed forces of *certain intensity* between groups of a *certain size* consisting of individuals who are armed, who wear distinctive insignia and who are subject to military discipline under responsible command"⁵⁵⁸.

One could of course distinguish unacceptable acts of political violence including acts of terrorism from acceptable acts of political violence (which are equated here with 'war') on either, or all of these grounds mentioned by De Lupis. However the idea that it is either the size of the armed forces perpetrating such violence, or the scale, intensity or sustainability of the political violence that is the most appropriate factor to use to differentiate between war, which is seen by all but the pacifists as an acceptable form of political violence, and terrorism which is not, is rejected here, for a number of reasons. Whilst De Lupis' last criterion that of wearing an insignia will be dealt with later.

The main reason for rejecting these approaches is that there does not seem to be any credible reason why the size of the perpetrator, the scale, intensity or sustainability of its violence should be important to a distinction which is primarily a moral one (nor interestingly enough do such authors appear to suggest a particular size, scale, or level of

⁵⁵⁸ De Lupis I.D. *The Law of War*. (Cambridge University Press. Cambridge. 1987.). p24.

intensity or what constitutes sustainability!)⁵⁵⁹. Here it should be pointed out if the size of the perpetrator, the scale, intensity of the violence was actually accepted as the basis for differentiating between an act of war and an act of terrorism, then consistency would imply that those not traditionally viewed as 'terrorists' such as Tito's partisans, the French Resistance in World War II, or the American 'minutemen', as well as members of special forces engaged in low intensity warfare, would also acquire this pejorative label.

As for reasons for not including 'sustainability' within a definition, firstly this element has ironically also been raised as a requirement within the definition of the term 'terrorism'. Wilkinson for example claimed that political terrorism: "is a sustained policy involving the waging of organised terror either on the part of the state, a movement or faction, or by a small group of individuals" (which interestingly contrasted with "political terror" which occurred "in isolated acts"). Therefore, for Wilkinson, neither one isolated act nor a series of random acts is terrorism⁵⁶⁰. The requirement of 'sustainability' can also be seen to be contained within Schmid's list, that is if one accepts its meaning to be broadly the same as the group of words "repetitiveness, serial or campaign character of violence" noted within 7% of the 109 definitions identified by Schmid, and ranked number 20 within table entitled 'Frequencies of Definitional Elements in 109 Definitions'. Secondly Wardlaw declared:

"The difficulty with excluding an isolated act from the compass of terrorism, however, is that it is not possible to know how to classify any particular act until it is seen that it is or is not part of a series....Imagine that a political group possesses a nuclear device and threatens to detonate it unless certain demands are acceded to by the government. Imagine further that this is the first act on the part of the group. Surely one would not have to wait until the group perpetrated another act for the first to be an instance of terrorism"⁵⁶¹.

⁵⁵⁹ Thus whilst this author views them as irrelevant, if one did think they were relevant it still does not really matter what figure(s) constitute the threshold for the qualifying size or intensity or sustainability, as long as one was consistent in their application to each perpetrator of such political violence.

⁵⁶⁰ Wilkinson P. *Political Terrorism* (Macmillan. London. 1974.). p17.

⁵⁶¹ Wardlaw G. *Political Terrorism: Theory, Tactics and Countermeasures*. (Cambridge University Press. Cambridge. 1982.). p13.

In this way a requirement of sustainability would make a definition of terrorism too limited and it would exclude *apriori* what would be important, if extreme, instances of terrorism. This thesis then is in line with Wardlaw's reasoning and more specifically with the words of Paust who claimed that: "terrorism can occur at an instant and by one act"⁵⁶². This author is therefore in agreement with Teichman who wrote that terrorism: "is not to be identified by the scale of operations: it is not a quantitative notion"⁵⁶³.

Whilst on the topic it is worth examining the suggestion that 'intensity' could be used as a means of distinguishing terrorism from politically motivated riotous behaviour⁵⁶⁴. This was rejected because it was believed that it would create relatively more problems than the alternative which was eventually chosen. Firstly there is the question of where to set the level, and the reasons behind it, for without a convincing rationale the level set would appear random or arbitrary. For example, if the distinction between riotous behaviour and war or terrorism, was based upon the perpetrator's use of weapons, it would exclude various acts such as 'kneecapping', or 'punishment beatings' which should have the chance of being included within a definition of terrorism due to their widespread use by 'terrorist groups'.

Alternatively one could have used another of the 22 elements, that of "purposive, planned, systematic, organised action" noted in 32% of the definitions⁵⁶⁵ to distinguish between terrorism and acts of riots (and war), by including it in one's definition of the former. Again this author has great sympathy with including these elements of planning or systematic within one's definition of terrorism, as most acts of terrorism (and war) are pre-planned and systematic, whilst most acts of riotous behaviour are not. Its inclusion would mean that any acts of terrorism committed 'spontaneously' by a member of an organisation

⁵⁶² Paust J.J. 'A Definitional Focus' in Alexander. Y and Finger S. (eds). *Terrorism: Interdisciplinary Perspectives*. (McGraw-Hill. Maidenhead.1977.).pp18-29. p21. It is also worth noting that conversely one could have a short victorious 'war' without a shot being fired back in anger, if the threat of political violence was sufficient to persuade the enemy there was nothing to gain by resisting.

⁵⁶³ Teichman J. *Pacifism and the Just War: A Study in Applied Philosophy*. (Blackwell. Oxford. 1986.). p91.

⁵⁶⁴ Conversation with supervisor David George. July 1996.

⁵⁶⁵ Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland. Amsterdam. 1984.). Table 5. p76-77.

during an ongoing incident, could not be called terrorism. Perhaps a better way of distinguishing between the two is to incorporate into one's definition of terrorism (and for that matter an act of war) another of the 22 elements found within Schmid's list. Like the element of planning the inclusion of this element also enables one to distinguish between an 'act of terrorism' (as well as an act of war), from those political motivated 'acts of riot' that occur within a rebellion or revolution without affecting the issue of the moral acceptability. The advantage it has over using a particular level of violence is that it enables one to distinguish an act of politically motivated riot or armed sectarian violence from that of war and terrorism. The relevant requirement of both an act of terrorism and war, or war crimes is that unlike their riotous moral equivalents, these acts of politically motivated violence must be carried out by an organisation.

Organisation

Support for the view that 'organisation' is a necessary part of a definition can be found in the words of Wilkinson who claimed that political terrorism: "invariably entails" some organisational structure, however rudimentary⁵⁶⁶. The term also appears in Schmid's list as part of the set "Group, movement, organisation as perpetrator". As such it was noted within 14% of the 109 definitions analysed by Schmid, albeit as part of this larger category⁵⁶⁷. The inclusion of this factor enables a distinction to be made between war and war crimes, and terrorism and those similar politically motivated acts of violence that occur during 'riots' or inter communal violence, it also allows one to distinguish unorganised politically motivated riotous behaviour that occurs during rebellions from that of political revolutionaries when they attempt such actions as storming the Winter Palace. Of more practical value is the fact that the requirement of being an organisation enables each side in the political dispute to end the conflict, and to treat the perpetrators of what would otherwise be 'crimes', as prisoners of war and to keep them until the signing of a peace treaty with the enemies organised group.

⁵⁶⁶ Wilkinson P. *Political Terrorism* (Macmillan. London. 1974.). p17-18.

⁵⁶⁷ Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland. Amsterdam. 1984.).Table 5. p76-77.

From this position it is not difficult to see how many authors could argue that it is 'status' or 'proper authority' which is the distinguishing factor between 'war' and those forms of political violence including terrorism that are considered unacceptable or illegitimate. An example of someone who takes the former view is the lawyer Oppenheimer. He claimed that:

"War is a contention between two or more States through their armed forces, for the purpose of overwhelming each other and imposing such conditions of peace as the victor pleases"⁵⁶⁸.

It is not surprising that a legal author should produce such a conclusion seeing that traditionally only states could sign the legal documents that codify the 'laws of war' (or 'laws of armed conflict' as they were later to become generally known) and create customary international law. However even within the contemporary 'state-centric' field of contemporary international public law, mainstream western textbooks assert that the U.N. has legitimised the use of armed force by particular non-state actors -namely 'peoples'- to achieve their aim (of self-determination)⁵⁶⁹. Allowing both those who approve and disapprove of such violence to claim that the U.N. has legitimised acts that would otherwise be termed 'terrorist'⁵⁷⁰. Whilst the Red Cross' has enabled

⁵⁶⁸ Oppenheimer. *International Law*. (7th ed.) Lautepaucht H. *International Law*. 957, 202. cited by Dinstein Y. *War, Aggression and Self Defence*. (Grotius Publications. Cambridge. 1988.). p8.

⁵⁶⁹ Akehurst for example wrote that there is "general agreement that peoples who have a legal right to self-determination are entitled to fight a war of national liberation". Akehurst M. *A Modern Introduction to International Law* (6th Ed. London. Routledge. 1991.). p 299. For details of the debate see Sproat P.A. 'The United Nations' Encouragement of Aggression and Ethnic Cleansing: Time to Abandon the Right to Self-Determination?'. *Terrorism and Political Violence*. Vol 8.(1). Spring 1996. pp93-113 generally.

⁵⁷⁰ Examples of those who believe that the U.N. had legitimised the use of terrorism by national liberation movements include K. Asmal K. 'Apartheid and Terrorism-The Case of South Africa' pp129-158 and Ate B.E. 'Terrorism in the Context of Decolonization' pp 79-96, both within Köchler H. (ed) *Terrorism and National Liberation* (Verlag Peter Lang. Frankfurt. 1988.), and Friedlander R.A. 'Terrorism and National Liberation Movements: Can Rights Derive From Wrongs' *Case Western Reserve Journal of International Law*. Vol 13 (2) 1981. pp281-289. The former two are in favour of the U.N.'s actions the latter against. At best the position seems to be that identified by Roberts who concluded that "UN resolutions have given no clue as to whether liberation struggles ought to be fought within limits derived from , or akin to, the laws of war" Roberts A. 'Prolonged Military Occupation: The Israeli-occupied Territories 1967-88' in Playfair E. (ed) *International Law and the Administration of Occupied Territories: Two Decades of Israeli Occupation of the West Bank and Gaza Strip*. (Oxford University Press. Oxford. 1992.). pp25-86. p64. All cited by Sproat

national liberation groups to become a party to these laws of war⁵⁷¹ within the wording of the 1977 Protocols to the Four Geneva Conventions of 1949. Thus organisations known as national liberation movements can now formally adhere to the first Geneva Protocol: "by a simple unilateral declaration"⁵⁷². State practice can also be seen to lend support to this view in other ways. States themselves are also known to treat politically motivated perpetrators of violence differently to those individuals who have committed essentially identical acts of violence for non-political motives. This can be seen not only in their treatment of violence committed elsewhere, for example in their policies on accepting requests for extradition or asylum seekers, but also in regards to acts of violence committed at home⁵⁷³.

The view that the right to wage and conduct war belonging solely to states (or perhaps more accurately to their divinely ordained monarchs) can be traced back further than the origins of international law, to the theological origins of the 'just war' tradition with which it is associated. The origins of this can be traced at least as far back as St. Augustine's attempts to justify Christian participation in Roman

P.A. 'The United Nations' Encouragement of Aggression and Ethnic Cleansing: Time to Abandon the Right to Self-Determination?'. *Terrorism and Political Violence*. Vol 8.(1). Spring 1996. pp93-113. Ftn 56. p101.

⁵⁷¹ It is of course possible to argue as McCoubrey does that the Protocols insist that only national liberation movements that are capable of adhering to them i.e which have control of territory presumably upon which they can keep prisoners of war can be a signatory to them. McCoubrey H. *International Humanitarian Law: The Regulation of Armed Conflicts*. (Dartmouth Publishing Co. Aldershot. 1990.). p172. From which one can imply that only they can commit acts of war. However If one accepts this consistency would demand that any military action by a state that likewise did not allow the perpetrators to take prisoners of war would not qualify. Thus if a campaign solely involved the use of air strikes (or submarine warfare) in which the belligerent involved would not be capable of taking prisoners of war this too would not qualify. Surely just as one could allow the States use of surgical air strikes (which distinguished between acceptable and unacceptable targets) without being able to take P.O.W.s then one could allow land based national liberation movements or other non state actors to fight without being able to take P.O.W.s permanently if they don't want to, as long as they don't kill any who have surrendered in the meanwhile. Ramsey seems to suggest that it might be legitimate to kill those who have surrendered in a fluid jungle war situation where it is impossible to insure that he will stay surrendered). Ramsey P. *The Just War: Force and Political Responsibility*. (University Press of America. Lanham MD. 1983.). p435.

⁵⁷² De Lupis I.D. *The Law of War*. (Cambridge University Press. Cambridge. 1987.). p44.

⁵⁷³ For example the privileges enjoyed by persons exiled to Siberia by the Tsar of Russia, political offenders including Adolf Hitler in Weimar Germany, and the contemporary practice of presidential pardons.

wars⁵⁷⁴ at the turn of the fifth century, if not to biblical times⁵⁷⁵ or even Ancient Greece⁵⁷⁶. It is because the just war tradition has been used as a means of distinguishing acceptable from unacceptable acts of political violence by organisations (indeed it has been described as "the dominant intellectual tradition of thought about the morality of war"⁵⁷⁷) that this thesis now turns to it, to try to distinguish unacceptable acts of political violence carried out by organisations such as terrorism (and war crimes), from the acceptable acts of organised political violence which are here labelled as acts of war.

⁵⁷⁴ O'Brien W. *The Conduct of Just and Limited War*. (Praeger. New York. 1981.). p4.

⁵⁷⁵ Deuteronomy for example advised that:"When thou shalt besiege a city a long time, in making war against it to take it, thou shalt not destroy the trees thereof by forcing an axe against them: for thou mayest eat their fruit, and thou shalt not cut them down (for the tree of the field is man's life) to employ them in the siege". Deuteronomy Chapter 20. Verse 19 in *The Holy Bible*. King James Version. (Collins. London. 1953.).

⁵⁷⁶ According to Roberts and Guelff, the Greeks are said to have customarily observed certain humanitarian principles which have become fundamental rules of the contemporary laws of war. They cite Phillipson C. *The International Law and Custom of Ancient Greece and Rome*. (Macmillan. London. 1911.). Vol II, pp166-384. Roberts A. and Guelff R.(eds.). *Documents on the Laws of War*. (2nd. ed. Clarendon Press. Oxford. 1989.). p2.

⁵⁷⁷ Norman R. *Ethics Killing and War*. (Cambridge University Press. Cambridge. 1995.). p117.

The Just War Tradition

The just war tradition is a set of recurrent issues and themes in the discussion of warfare and reflects a general philosophical orientation towards the subject⁵⁷⁸. As a result of this and because it is neither possible to speak of a single doctrine of just war, to point to a lineal development of a single idea, nor to say that it has a continuous history⁵⁷⁹, it is probably more accurate to talk about a just war tradition than a 'just war doctrine' or 'just war theory' as some authors do. Although one author has claimed that the term 'permissible' would be a more accurate descriptive adjective than the term 'just', to describe the moral/legal guidelines concerning the contemporary use of armed conflict⁵⁸⁰. Whatever, there are two main parts to the just war tradition. In the classical language of Latin these are known as *jus ad bellum*, and *jus in bello*. The first of which concerns itself with the question of whether a resort to force is justified, the second with whether a particular form of the use of force is justified⁵⁸¹. According to Johnson, Mediæval Christianity produced the *jus ad bellum*, whilst the *jus in bello* came out of the customs and sensibilities of the knightly class⁵⁸². Other authors such as Lammers note the influence of Mediæval Canon law such as the "Peace of God" which forbade attacks upon particular groups of people including pilgrims, women, children, the aged and the infirm, and the "Truce of God" which forbade battle on particular (religious) days⁵⁸³. It has been said that since the Peace of Westphalia ended the 'Wars of Religion' the focus of the tradition has said to have moved towards the *jus in bello* part⁵⁸⁴, as a result of the influence of 'natural law' and later international law. Meanwhile interest in the

578 Clark I. *Waging War: A Philosophical Introduction*. (Clarendon. Oxford. 1988.). p31.

579 Clark I. *Waging War: A Philosophical Introduction*. (Clarendon. Oxford. 1988.). p31.

580 O'Brien W. *The Conduct of Just and Limited War*. (Praeger. New York. 1981.). p14.

581 Johnson J.T. *Can Modern War Be Just*. (Yale University Press. 1984.). p18.

582 Johnson J.T. *Can Modern War Be Just*. (Yale University Press. 1984.). p14.

583 Lammers S.E. 'Approaches to Limits on War in Western Just War Discourse' in Kelsay J. and Johnson J.T. *Cross, Crescent and Sword: The Justification and Limitation of War in Western and Islamic Tradition*. (Greenwood Press. Westport, Connecticut. 1990.).pp51-78. p64.

584 Weinberg L.B. and Davis P.B. *An Introduction to Political Terrorism*. (McGraw-Hill. London. 1989.). p156.

issue has been rekindled by the great wars of the first half of the century and the development of weapons of mass destruction.

Jus ad bellum.

According to O'Brien, the three major categories of *jus ad bellum* guidelines which must be satisfied if the decision to go to war is to count as 'just' concern 'competent authority', 'just cause' and 'right intention'⁵⁸⁵. A view which echoes that of St.Thomas Aquinas who also attempted to justify the involvement of Christians in warfare in stating:

"for a war to be just three conditions are necessary. First, the authority of the ruler within whose competence it lies to declare war. A private individual may not declare war....Nor has he the right to mobilise the people, which is necessary in war⁵⁸⁶....Secondly, there is required a just cause; that is those who are attacked for some offence merit such treatment....⁵⁸⁷Thirdly there is required a right intention on the part of the belligerents: either of achieving some good object or avoiding some evil"⁵⁸⁸.

Other authors claim there is more to *jus ad bellum* than these three criteria, Johnson for example added to these, the requirements of 'proportionality' (in the sense of total good and evil anticipated) and of 'last resort'⁵⁸⁹. Whilst Norman added two more criteria to this enlarged list, these being a 'reasonable hope of success' and a 'formal declaration of war'⁵⁹⁰. It is to these *jus ad bellum* requirements that this thesis

⁵⁸⁵ O'Brien W. *The Conduct of Just and Limited War*. (Praeger. New York. 1981.). p16.

⁵⁸⁶ St.Thomas Aquinas. 'Summa Theologica, Secunda Secundae',. No 15. Q.40. Art1. in D'Entreves A.P. (ed.).*Aquinas: Selected Political Writings*. (Blackwell. Oxford. 1948.) p159 cited by O'Brien W. *The Conduct of Just and Limited War*. (Praeger. New York. 1981.). p17.

⁵⁸⁷ St.Thomas Aquinas. 'Summa Theologica, Secunda Secundae',. No 15. Q.40. Art1. in D'Entreves A.P. (ed.).*Aquinas: Selected Political Writings*. (Blackwell. Oxford. 1948.) p159 cited by O'Brien W. *The Conduct of Just and Limited War*. (Praeger. New York. 1981.). p20.

⁵⁸⁸ St.Thomas Aquinas. 'Summa Theologica, Secunda Secundae',. No 15. Q.40. Art1. in D'Entreves A.P. (ed.).*Aquinas: Selected Political Writings*. (Blackwell. Oxford. 1948.) p159. Cited by O'Brien W. *The Conduct of Just and Limited War*. (Praeger. New York. 1981.). p33.

⁵⁸⁹ Johnson J.T. *Can Modern War Be Just*. (Yale University Press. 1984.). p18.

⁵⁹⁰ Norman R. *Ethics Killing and War*. (Cambridge University Press. Cambridge. 1995.). p118.

addresses itself in the hope that they may help to distinguish acceptable from unacceptable acts of political violence and thus help identify acts of terrorism. This will be achieved by examining what O'Brien termed the main three criteria before examining the rest. The method was chosen primarily because of the difficulty separating the first three criteria. St. Augustine, for example, noted the requirement of 'competent', 'proper', 'right' or 'legitimate' authority' when he claimed that for "the natural order of men to be peacefully disposed requires that the power and decision to declare war should be with the rulers"⁵⁹¹, and he mixed the latter two when he wrote in *Super Josue* :

"[t]hose wars generally defined as just which avenge some wrong, when a nation or a state is to be punished for having failed to make amends for the wrong done, or to restore what has been taken unjustly"⁵⁹² .

Unlike the previous factors that may have constituted the basis for distinguishing between illegitimate and legitimate acts of political violence (that is, the size of the participants, or the scale, intensity or duration of the conflict), it is easy to see how the issue of acceptability is confused with that of possessing 'proper authority' or 'just cause' and 'right intention'. The claim that acts of political violence committed by non-state actors cannot be equated with the acts of war committed by the State, opens the way to inferring that the unacceptable political violence known as terrorism is committed by non-state actors. Of course this thesis rejects such an equation and finds support from other academics for its rejection as well as support from within the 'just war' tradition itself, albeit the *jus in bello* part of it.

It is unsurprising that this investigation of what constitutes the acceptable form of organised violence known as war (and the unacceptable form of political violence known as terrorism) should reject the view that the acceptability of an act of political violence

⁵⁹¹ St. Augustine. *Contra Faustum* (XXIII), 73 cited by St.Thomas Aquinas. 'Summa Theologica, Secunda Secundae',. No 15. Q.40. Art1. in D'Entreves A.P. (ed.).*Aquinas: Selected Political Writings*. (Blackwell. Oxford. 1948.) p159 cited by O'Brien W. *The Conduct of Just and Limited War*. (Praeger. New York. 1981.).O'Brien W. *The Conduct of Just and Limited War*. (Praeger. New York. 1981.). p17.

⁵⁹² St. Augustine. Book LXXXIII,qu.X.cited by St.Thomas Aquinas. 'Summa Theologica, Secunda Secundae',. No 15. Q.40. Art1. in D'Entreves A.P. (ed.).*Aquinas: Selected Political Writings*. (Blackwell. Oxford. 1948.).p159. O'Brien W. *The Conduct of Just and Limited War*. (Praeger. New York. 1981.). p20.

should be primarily linked to the idea of possessing 'proper authority' (although this is not to say that the author cannot be connected, in that the unacceptability of a particular act of political violence may be linked to the fact that a particular authority is given the right to use particular forms of violence for specific purposes). In this way this author is in agreement with Johnson who noted that perhaps more than any of the *jus ad bellum* requirements, right authority, which has traditionally served to legitimise the use of force by princes and later by states, seems irrelevant in today's cynical age⁵⁹³. A point reflected by Conor Cruise O'Brien's comment that:

"[t]hose who are described as terrorists...make the uncomfortable point that national armed forces, fully supported by democratic opinion have in fact employed violence and terror on a far vaster scale than what liberation' movements have been able to attain. The freedom fighters' see themselves as fighting a just war. Why should they not be entitled to kill burn and destroy as national armies, navies and airforces and why should the label 'terrorist' be applied to them and not national militaries?"⁵⁹⁴.

As for the necessity for possessing a 'just cause', it has its modern day equivalent which is to be found within international law. It appears that almost all of the publicists accept that the United Nations Charter of 1945 allows for the use of such political violence by signatory states in the just cause of 'self-defence' (at least until the new 'proper authority' -the United Nations Security Council- steps in). Whilst a number of authors that almost all publicists accept such political violence in the (just) cause of promoting 'human rights'⁵⁹⁵ especially that of aiding or achieving the 'peoples' right to self-determination⁵⁹⁶. However in

⁵⁹³ Johnson J.T. *Can Modern War Be Just*. (Yale University Press. 1984.). p22.

⁵⁹⁴ O'Brien C.C. 'Liberty and Terrorism'. *International Security* Vol.2 (Fall). 1988 .p50-51, Cited in Kegley C.W. Jnr., Sturgeon T.V. and Wittkopf E.R. 'Structural Terrorism: The Systematic Sources of State Sponsored Terrorism' in Stohl. M and Lopez G.A. *Terrible Beyond Endurance* (Greenwood Press. Westport, Connecticut. 1988.). pp13-34. p15.

⁵⁹⁵ Téson for example claimed that "the promotion of human rights is as important a purpose in the Charter as is the control of international conflict" Téson F. *Humanitarian Intervention* 5. 1988. p5. Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.). p131.

⁵⁹⁶ A conclusion shared even by authors of mainstream Western textbooks on international law, including Akehurst who wrote that there is "general agreement that peoples who have a legal right to self-determination are entitled to fight a war of national liberation". Akehurst M. *A Modern Introduction to International Law* (6th Ed.

reference to the requirement of possessing a 'just cause', De Lupis wrote that:

"[t]he various just war theories had considerable flaws, above all concerning who was to assess whether a war was just. Since there could be few objective criteria it appeared that the test, in the final analysis, must be a subjective one"⁵⁹⁷.

Likewise Lammers asked: 'Who in our pluralistic world is to provide the definition of justice and judge the justness of the cause?'⁵⁹⁸. Those who would claim that possession of a 'just cause' is the basis of distinguishing between acceptable and unacceptable acts of violence must therefore overcome three problems. The first is that agreement on which particular (political) 'causes' are 'just', (or which 'rights' have been wronged), does not exist nor is it likely to. It is difficult to see a consensus developing in agreement with for example Mao-Tse-Tung's view that all wars in history may be divided into two kinds, all revolutionary wars and those waged by communists being just, all wars waged by imperialism being unjust. This problem is also illustrated in the debate within international law concerning the State's right to use force outside of its area of domestic jurisdiction. Despite the fact that the majority of the world's nation-states have signed the U.N. Charter which most authors claim legitimises a state's use of violence outside of its area of jurisdiction only in the cause of self-defence, others say that such force can be used to achieve certain human rights.

Secondly even in the unlikely event of political agreement being found and a particular 'just cause' identified as such, then one would have the problem of defining whatever (contested) concept, constituted the 'just cause' (and unjust cause), for example what constituted 'revolutionary' or 'imperialism' to use Mao's example. Indeed even when the vast

London. Routledge. 1991.). p 299. For details of the debate see Sproat P.A. 'The United Nations' Encouragement of Aggression and Ethnic Cleansing: Time to Abandon the Right to Self-Determination?'. *Terrorism and Political Violence*. Vol 8.(1). Spring 1996. pp93-113 generally.

⁵⁹⁷ De Lupis I.D. *The Law of War*. (Cambridge University Press. Cambridge. 1987.). p 126-7.

⁵⁹⁸ Lammers S.E. 'Approaches to Limits on War in Western Just War Discourse' in Kelsay J. and Johnson J.F. *Cross, Crescent and Sword: The Justification and Limitation of War in Western and Islamic Tradition*. (Greenwood Press. Westport, Connecticut. 1990.). pp51-78. p60. Similarly Kunz J.L. 'Bellum Justum and Bellum Legale' *American Journal of International Law*. Vol 45 (3). 1951. pp528-534. p531.

majority of nation states have agreed that self-defence constitutes one of those occasions when the use of external state violence is legitimate, there is no consensus on what constitutes sufficient grounds (or 'good cause') for the use of such violence in self-defence, never mind the scale and immediacy of the provocation necessary to justify its use, nor the size and timing of it. Similarly the UN itself has failed to define the term 'people' a grouping which possesses a right to self-determination which entitles it to use all means necessary to achieve its aim⁵⁹⁹.

Finally even if one had both an agreement on a 'just cause' and a clear definition of it, one then has to ask 'Are limitations on the means to achieve the just ends necessary?'. For if it is the chosen instrument of God for the punishment of the wicked on earth, then we have an excuse for the slaughter and mutilation of the enemy be they armed or unarmed prisoners of war or civilians⁶⁰⁰. So unless one wants to claim that the distinction between acceptable and unacceptable acts of political violence nature is based solely upon the nature of the *causus belli*, i.e. that war can be distinguished from acts of terrorism because

⁵⁹⁹ Nowhere in the voluminous documentation of the UN is the concept of a 'people' defined in an unambiguous manner. An interpretation which is also accepted by many of those who support the United Nations 'legalisation' of an unrestricted application of the 'right to self determination'. Michalska states that "no definition of that notion is provided in international law". Michalska A. 'Self Determination in International Law' in W. Twinning (ed) *Issues of Self Determination*. (Aberdeen University Press. Aberdeen. 1991.). p71-90 p73. A fact reflected in both the UN's attempts to define the term 'peoples' in the 1980's. For example Aureliu Critescu, the UN Special Rapporteur, on the historical and current development of the right to self determination gave the following ambiguous definition in his 1981 report :

"(a) the term 'people' denotes a social entity possessing a clear identity and its own characteristics;

(b) it implies a relationship with a territory, even if the people in question has been wrongly expelled from it and artificially replaced by another population;

(c) a people should not be confused with ethnic, religious or linguistic minorities, whose existence and rights are recognised in Article 27 of the ICCPR" (UN Doc. E/CN.4/sub2/404/rev.1,1981): Cited by Professor T. Hadden in Liberty. *Broken Covenants Violations of International Law in Northern Ireland*. (National Council For Civil Liberties. London. 1993). p144. Whilst even Dr Yvo Peters a supporter of such rights is noted on the same page as saying that a group of experts organised by the UN Educational Scientific and Cultural Organisation (UNESCO) to try to define the concept of a 'people' were unable to reach agreement as recently as December 1989. Nor has the UN established a definitive list of peoples who may legitimately claim the 'right to self determination' Ofuatey-Kodjoe W. 'Self-Determination' in O.Schachter and C.C. Joyner (eds) *United Nations Legal Order*. (Cambridge University Press. Cambridge. 1995) pp349-389. p378. all cited by Sproat P.A. 'The United Nations' Encouragement of Aggression and Ethnic Cleansing: Time to Abandon the Right to Self-Determination?'. *Terrorism and Political Violence*. Vol 8.(1). Spring 1996. pp93-113. p102.

⁶⁰⁰ Melzer Y. *Concepts of Just War*. (A.W. Sijthoff. Leiden. 1975.). p58.

terrorists do not have a 'just cause', then one must find an alternative basis for distinguishing between such acts. Unfortunately it is precisely this point that dogs the debate on terrorism leading to the expression the term 'one man's terrorist is another man's freedom fighter'.

As for the requirements of 'proportionality' (in the sense of total good and evil anticipated), 'last resort', 'reasonable hope of success' and a 'formal declaration of war' there appears even less reason to use these to help distinguish acceptable and unacceptable acts of political violence. Like the idea of a possessing a 'just cause', the *jus ad bellum* requirement of the use of the political violence being a 'last resort', fought with a 'reasonable hope of success' and in proportion to one's aim are also vague and it is difficult to see how the fulfilling of these criteria automatically make it a 'just' use of violence. Since the Kellogg-Briand pact outlawed the use of war as instrument of national policy⁶⁰¹ states have been loathed to declare that they are about to war on other states. Instead they prefer to claim that they are engaged in hostilities short of war, or some other euphemism. The point is that few people would consider that the acts of organised violence that occur during such conflict were illegitimate as a result of the failure to declare war. In addition a strict application of this criteria would mean that surprise attacks could only be considered as unacceptable or illegitimate acts of political violence, even if they hit only legitimate targets.

In its aim of distinguishing between acceptable acts of political violence perpetrated by organised entities, labelled here as 'war', and unacceptable acts of political violence, especially those labelled 'terrorism', this thesis has rejected the view that the distinction should be based upon the size of the military entities involved, the scale, intensity or duration of the conflict, or the cause or 'status' of the perpetrator. Whilst the latter two reasons have a more credible link to the issue of acceptability of such political violence and therefore its 'legitimacy', both of these factors constitute attempts to answer the question, "Under what (political) conditions is waging war justified?". Unfortunately this is the wrong question to be answered. Instead the

⁶⁰¹ De Lupius for example wrote "[t]he Briand-Kellogg Pact in 1928 finally outlawed not only aggressive war but all types of war for the solution of international controversies or as an instrument of national policy". De Lupis I.D. *The Law of War*. (Cambridge University Press. Cambridge. 1987.). p26.

task is to focus on that of the methods of war (*jus in bello*) rather than the justification (*jus ad bellum*) in order to find out what factors (if any) enable people to view certain acts of political violence as acceptable and others as unacceptable. A view that is in line with McGurn who argued that:

"[a]lthough Just War principles have been perverted notoriously, to make moral crusades out of wars of national interest, their intention is just the opposite - to ensure that having a justification for going into battle is not taken to sanction an open license once in battle"⁶⁰².

Similarly Arnold can be seen to have added precision to this, when he asserted that all laws of war must assume that both parties are equally in the right⁶⁰³. This work then will echo these last two comments, and those made by Brian Jenkins who criticised those who suggest that there can be no objective definition of terrorism on the grounds that there are no universal standards of conduct in peace and war. According to Jenkins even war has commonly accepted (if not always observed) rules outlawing the use of certain tactics⁶⁰⁴, namely those rules against bombing, assassination, kidnapping, hostage taking and hijacking of civilians - the type of actions that make up 95 percent of what is most often described as "terrorism"⁶⁰⁵. The view that war is a rule-governed activity is the opposite of saying that war is hell in which everything goes⁶⁰⁶. This idea of war as a rule governed activity which forbids indiscriminate targeting is not merely wishful thinking, it pertains to the nature of war itself. Thus if war is, as Clausewitz's maintained, the continuation of policy by other means, then it will be (at least minimally) restrained by those underlying principles' for a

⁶⁰² McGurn W. 'Terrorist or Freedom Fighter?. The Cost of Confusion'. (Institute for European Defence and Strategic Studies. London . 1987. Occassional Paper No.25). p16.

⁶⁰³ Best G. *Humanity in Warfare*. (Columbia University Press. New York. 1980).p.7. After Arnold T. Introductory Lectures on Modern History (1842). p162.

⁶⁰⁴ Jenkins B. A *Strategy for Combatting Terrorism* (Rand. Santa Monica. California. Paper Series 66628. May 1981.) p. 67. cited by Stohl M. and Lopez G.A. 'Introduction' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Conecticut. 1984.).pp3-10. p9.

⁶⁰⁵ After Jenkins B. *International Terrorism: The Other World War*. (Rand. Santa Monica. California. 1985) p.12 cited by Der Derian J. *Anti - Diplomacy: Spies, Terror, Speed and War*. (Blackwell. Oxford. 1992.).p.98. I have replaced his use of the word states with that of political organisations.

⁶⁰⁶ Clark I. *Waging War: A Philosophical Introduction*. (Clarendon. Oxford. 1988.). p31.

policy entails a political society, a moral community guided by reason and prudence⁶⁰⁷. Indeed without the idea of war being a rule governed activity it is impossible to talk about 'war crimes' instead one could only talk of the crime of war, (or 'Crimes against the peace' as the Nuremberg Principles classified it). The immediate question to be asked then is: 'What is the nature of the rules which govern the conduct of war within the just war tradition? (from which flows the idea of war crimes other than the crime of war), the answer to which is be found within the *jus in bello* part of the just war tradition.

Jus in bello.

As already noted at the start of the section on the just war tradition, a consensus exists that there are only two criteria or tests that are applicable in determining the justice of war's conduct according to the just war tradition. These are the principle of proportionality and the principle of discrimination⁶⁰⁸. Interestingly the former principle has already been mentioned in relation to the *jus ad bellum* part of the tradition and therefore proportionality has implications for both the initiation of war and for waging of war once begun⁶⁰⁹. The link between the *jus ad bellum* and *jus in bello* parts are most obvious within the principle of proportionality. However this author, like Walzer, takes the view that it is possible to view the *jus ad bellum* and *jus in bello* elements of the just war tradition as "logically independent"⁶¹⁰. Decisions of proportionality are made by both at the strategic and

607 Phillips R.L. 'Combatancy and Noncombatancy and Noncombatant Immunity in Just War Tradition' in Kelsay J. and Johnson J.F. *Cross, Crescent and Sword: The Justification and Limitation of War in Western and Islamic Tradition*. (Greenwood Press. Westport, Connecticut. 1990.). pp179-195. p180.

608 See for example Ramsey P. *The Just War: Force and Political Responsibility*. (University Press of America. Lanham MD. 1983.). p428, Johnson J.T. *Can Modern War Be Just*. (Yale University Press. 1984.).p18, Norman R. *Ethics Killing and War*. (Cambridge University Press. Cambridge. 1995.).p119.O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p42.

609 Johnson J.T. *Just War Tradition and the Restraint of War: A Moral and Historical Inquiry*. (Princeton University Press. Princeton. New Jersey. 1981.). p219-220 cited by O'Brien W. 'The International Law of War as Related to the Just War Tradition' in Kelsay J. and Johnson J.T. *Just War and Jihad*. (Greenwood Press. Westport, Connecticut. 1991.). pp163-193. p179 .

610 Walzer M. *Just and Unjust War*. (Allen Lane. London. 1978.). p195.

tactical level. That is the decision as to whether the actions are proportionate to the object of war -the 'just cause'- is taken by the politician, whilst the decision as to whether the actions are proportionate to a discrete legitimate military objective is taken by the military commander. Of the two types of proportionality within the just war tradition it is far easier to judge the 'proportionality' of military means to the *jus in bello* military ends. Although that does not mean it is easy to do at all, indeed the difficulty of identifying 'proportionality' constitutes the main reason why the 'principle of proportion' is not included within a definition of terrorism. Even at this tactical level 'proportionality' is far too vague a concept to be credibly used to produce a definition of terrorism. The issue of whether a particular use of force is a military necessity at a given is always open to debate⁶¹¹ and nature of the principle of proportion is therefore "elastic"⁶¹². This problem has already been illustrated by the variety of views held by legal publicists, for although they agree that a victim state's use of force must be 'proportionate', there is no such agreement on how 'proportionality' should properly be calculated⁶¹³. Intoccia, for example, claimed that any response to an act of aggression which employs a level of violence "which is greater than is necessary to counter any *continuing immediate threat* must be viewed as impermissible" under international law⁶¹⁴. In contrast Roberts claimed that: "an accumulation of small events, such as minor terrorist attacks, can justify a single larger retaliatory response in certain instances"⁶¹⁵. Whilst William O'Brien asserted that the "referent of proportionality" should be "the overall pattern of past and *projected* acts"⁶¹⁶.

611 Roberts A. and Guelff R.(eds.). *Documents on the Laws of War*. (2nd. ed. Clarendon Press. Oxford. 1989.). p5.

612 O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p42.

613 Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.). p165.

614 Intoccia G. 'American Bombing of Libya'. *Case Western Reserve Journal of International Law*. Vol. 19. (1987). p206 cited by Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.). p165.

615 Roberts G. 'Self Help in Combatting State Sponsored Terrorism' *Case Western Reserve Journal of International Law* Vol. 19. (1987). (no page reference given), cited by Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.). p165.

616 O'Brien W. 'Reprisals, Deterrence and Self-Defence' in Counter-terror Operations' *Va. J. Int. Law* (1990).p472, cited by Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.). p166.

The second reason for excluding proportionality at the tactical level from this definition of terrorism applies only to those interpretations of proportionality that consider a response to be proportionate only to a previous act of violence, rather than some less tangible 'threat of violence'. That is to say because one cannot apply this narrower view of 'proportionality' to all acts of violence, for the first shot in a political dispute has no predecessor to which the *jus in bello* 'proportionality' can be assessed, any definition of terrorism that incorporated it would therefore not be applicable to all acts of political violence.

Finally, the inclusion of any concept of proportionality would mean that it is very difficult if not impossible to produce a definition of terrorism which could then be applied to those acts of violence which the State commits within its own area of jurisdiction to enforce the law. The element of proportionality is often considered by the State for practical reasons in determining its application of violent sanctions. Generally speaking the more proportionate and therefore 'natural' its justice appears the more likely the State will dare to use the sanction. The more automatic the sanction implemented by the State, the more credible its use of political violence to deter its inhabitants from committing criminal acts. So if the element of 'proportionality' was considered as a means of distinguishing between 'terrorist' and 'non-terrorist' acts then, it would also have to be used to assess the State's use of political violence against its own citizens, with all the problems of assessing the proportionate nature of culturally different punishments by politically different actors. Therefore in addition to the problems of political bias that affect any assessment of proportionality, any evaluation of proportionality faces great (if not insoluble) cultural difficulties especially when like actions were not compared to like. This problem is evident in the stark 'cultural' differences of opinion that surround the use of particular acts of physical violence as punishment by Middle Eastern states. Acts which some European states had abolished centuries ago. Consistency therefore requires the issue of proportionality to be sidelined from the production of a definition of terrorism that aims to include the violence of the state and insurgents.

In contrast to this *jus in bello* principle, the principle of discrimination can be specified rather more precisely⁶¹⁷, for it is in the nature of the principle of discrimination to remain rigidly opposed to various categories of means irrespective of their necessity to success in war⁶¹⁸. With this in mind it is not surprising, then, that: "most debates about the morality of modern war have focused on the principle on discrimination"⁶¹⁹. Likewise the principle of discrimination has also been seen as an essential part of a definition of the term 'terrorism', Perlstein for example claimed that:

"[t]he main distinguishing feature of terrorism in the modern era is that it does not recognise the rules and conventions of war. There is no distinction made between the combatant and the non combatant"⁶²⁰.

It is therefore to the element of discrimination that the thesis now turns in order to try and distinguish between those acts of political violence such as war which are considered legitimate and those of terrorism and war crimes which are not.

617 Roberts A. and Guelff R.(eds.). *Documents on the Laws of War*. (2nd. ed. Clarendon Press. Oxford. 1989.). p5.

618 O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p42.

619 O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p42.

620 Perlstein G.R. 'The Changing Face of Terrorism: From Regicide to Homicide' *International Journal of Offender Therapy and Comparative Criminology*. Vol.30. 1986. pp187-193. p118.

The principle of discrimination.

According to Hanle the principle of discrimination was perhaps the most widely accepted criteria used to define abnormal force in war⁶²¹. Walzer claimed that of all the existing laws of war the issue of targeting was the one most closely connected to universal notions of right and wrong, and although their details may vary from place to place it is these rules that point toward a general conception of war as a combat between combatants. A conception that has turned up again and again in anthropological and historical accounts⁶²². Similarly Johnson claimed that it was one of the strongest and most regular themes within the just war tradition⁶²³.

The discrimination aspect of the just war tradition has essentially three things to say. The first is that non-combatants must never be made the (primary) object of direct attacks. According to Phillips, this is but one instance of the application of the categorical prohibition of murder to the realm of war⁶²⁴. This fact was not lost on Blakesley who argued that:

"[k]illing an enemy combatant during war is akin to killing an attacker for which there is justification, but during war, one may not intentionally or wantonly kill non-combatants or even captive former combatants. Non-combatants were never "attackers", so they may not be summarily killed. "⁶²⁵

From here it is easy to see how Sederberg could claim that the distinction between combatant and non-combatant is perhaps one of the

621 After Hanle, although he actually refers to attacks on non combatants especially civilians. Hanle D.J. *Terrorism: The Newest Face of Warfare*. (Pergammon-Brassey's. New York. 1989.). p106.

622 Walzer M. *Just and Unjust War*. (Allen Lane. London. 1978.). p42.

623 Johnson J.T. *Can Modern War Be Just*. (Yale University Press. 1984.). p27.

624 Phillips R.L. 'Combatancy and Noncombatancy and Noncombatant Immunity in Just War Tradition' in Kelsay J. and Johnson J.F. *Cross, Crescent and Sword: The Justification and Limitation of War in Western and Islamic Tradition*. (Greenwood Press. Westport, Connecticut. 1990.).pp179-195. p181.

625 Blakesley C.L. *Terrorism, Drugs, International Law and the Protection of Human Liberty. A Comparative Study of International Law, the Nature, Rule and Impact in Matter of Terrorism, Drug Trafficking, War and Extradition*. (Transnational Publishers. Inc. New York. 1992.). p38.

last firebreaks of civil order⁶²⁶. Once breached, no one can feel secure while the combatants in a political struggle slaughter one another the remainder of the community may take some comfort as long as they are not inadvertently caught in the cross fire.

The second implication is that criminal charges in accordance with the laws of the locality should not ordinarily be brought against captured combatants for their actions in war (except of course for breaches of these 'laws of war', that is, for 'war crimes'); and thirdly, since they no longer pose a threat of harm, prisoners of war should be treated as humanely as possible⁶²⁷. This latter reasoning allows the combatant to change their status to that of a non-combatant through capitulation, surrender or capture, soldiers can be reasonably certain that their lives will be saved. Or in Walzer's words, a soldier who surrenders enters into an agreement with his captors he will stop fighting if they will accord him what the legal handbooks call "benevolent quarantine"⁶²⁸. This latter issue is important for it was with this point that Schmid and Jongman countered Trotsky's view that Red Terror is not distinguishable from war or the armed insurrection of which it is the direct continuation. For them:

"[w]hat Trotsky in his attempt to justify mass terrorism failed to mention is that soldiers are armed and can (as a rule) save their lives, by capitulating, while victims of terrorism are generally non-combatants' and are granted no prisoner of war' status when kidnapped or taken hostage"⁶²⁹.

In this way combatants can do something in a war situation to avoid the infliction of political violence by surrendering, handing in their weapons or promising non-resistance unlike the prisoners of terrorists who as either kidnapped individuals or as a group of trapped hostages, cannot affect their own fate by modifying their behaviour⁶³⁰.

626 Sederberg P. *Terrorist Myths: Illusion, Rhetoric and Reality*. (University of Southern California. Prentice Hall. New Jersey. 1989.). p41.

627 Wilkins B T. *Terrorism and Collective Responsibility*. (Routledge. London. 1992.). p69.

628 Walzer M. *Just and Unjust War*. (Allen Lane. London. 1978.). p46.

629 Schmid A.P. and Jongman A.J. *Political Terrorism: A new guide to actions, authors, concepts and databases*. (SWIDOC. Amsterdam. 1988.). p9.

630 Schmid A.P. and Jongman A.J. *Political Terrorism: A new guide to actions, authors, concepts and databases*. (SWIDOC. Amsterdam. 1988.). p17.

The important exception to this 'targeting' rule are the injuries and deaths of non-combatants that are usually termed 'collateral damage'. For many authors of the just war tradition collateral damage is allowed under the principle of double effect. As Sederberg put it the acceptable effect is the destruction of the opposing combatants, the unacceptable effect is the incidental destruction of unfortunate by-standers⁶³¹. It demands that military action should, in its primary objective thrust, as well as its subjective purpose, discriminate between directly attacking combatants or military objectives and directly attacking non-combatants or destroying the structures of civil society as a means of victory⁶³². This issue is especially controversial because of the moral issue involved, for as Herman and G.O'Sullivan noted such killings are not inadvertent they are the systematic and inevitable result of calculated military policy⁶³³. It can also be seen as making an assessment of the targeting more difficult than simply asking if there were any non-combatants injured or killed, it does not really make the task of assessing whether or not an act is one of terrorism any more difficult for this involves an assessment of intent to start with. So whilst this author's definition will allow for this exception, it would be quite credible to assert that all such violent attacks on illegitimate targets should be considered as acts of terrorism (if all other qualifying criteria are met). Again the point is whichever of the two views on collateral damage one chooses, one must be consistent in one's application. It is also worth noting here Sederberg's interesting comment that whilst severe "collateral damage" from combatant warfare is not commonly considered "terrorist", at some point of wanton excess such as in the situation of nuclear war "it certainly could be"⁶³⁴.

Generally speaking then those acts of violence carried out in order to achieve political goals which are considered as acceptable, are those which aim to damage or destroy 'legitimate' targets. Those acts of

631 Sederberg P. *Terrorist Myths: Illusion, Rhetoric and Reality*. (University of Southern California. Prentice Hall. New Jersey. 1989.). p35.

632 Ramsey P. *The Just War: Force and Political Responsibility*. (University Press of America. Lanham MD. 1983.). p428.

633 Herman E.S. and O'Sullivan G. ' 'Terrorism' as Ideology and .Cultural Industry' in George A.(ed.) *Western State Terrorism*. (Polity Press. Oxford. 1991.). pp39-75. p51.

634 Sederberg P. *Terrorist Myths: Illusion, Rhetoric and Reality*. (University of Southern California. Prentice Hall. New Jersey. 1989.). p39.

political violence which do not aim to damage or destroy 'legitimate' targets are considered to be unacceptable. The former therefore can be seen as the moral equivalent of 'war' and the latter as 'war crimes', whilst the fact that they are committed by organised groups makes the analogy even stronger. It is of course possible to object to this by saying that war crimes are those actions which breach the legal provisions, and there are good reasons for this. But presumably advocates of such a view would have to use these legal concepts alongside political concepts such as war and terrorism or give up using the latter terms which have yet to be defined by international law. Here the idea is to identify an act of terrorism by explaining its relationship to other similar political concepts in a meaningful manner, in the way one can talk of the concept of genocide without meaning the exact wording of the 'legal' 'Convention on the Prevention and Punishment of the Crime of Genocide'.

Here it is worth noting that it would be a mistake to see such attacks on illegitimate targets as the only type of war crime. There are also those identical acts of violence directed against legitimate targets which use either *illegitimate means* or an *illegitimate mode*. That is they use illegitimate weapons such as dumb-dumb bullets or bacteriological warfare⁶³⁵, or they use treacherous or devious means (perfidy) such as disguising themselves as illegitimate targets. These two groups can also be seen as qualifying for the term 'war crimes' for they can be seen to breach those norms that are contained within actually existing international law. Some might also add 'Crimes against the Peace' to this list.

This in turn raises the question of 'How does one differentiate between an act of terrorism and other essentially similar 'war crimes' which inflict violence upon illegitimate targets?'. The answer is that whilst both may involve similar targeting of illegitimate victims, an act of terrorism is *designed* to communicate a message to an audience beyond the immediate target (victim) in order to affect the audience's behaviour. Thus within this 'tripartite' model of terrorism, insurgent terrorists target an immediate victim (or instrumental target), whilst

635 1899 Hague Declaration 3 Concerning Expanding Bullets and the 1925 Geneva Protocol on gas and bacteriological warfare.

their 'target for attention' (or 'audience' or 'primary target') is different. The physical condition (death or injury) of the victim of their violence itself is therefore often of secondary import to the terrorists⁶³⁶. In contrast essentially similar 'war crimes' such as massacres or genocide (by small groups) 'merely' involve the physical elimination of a particular group of illegitimate targets, and cannot be classified as terrorism because the intention is not to influence the behaviour of others but merely to destroy the immediate target group or victims⁶³⁷ (although strictly speaking genocide could also involve the killing of combatants for any of these would also have to be killed if one was trying to exterminate a whole genus).

It is from all of this that insurgency terrorism has been defined in one of the better attempts as:

"the purposive use of violence by the precipitators against an instrumental target in order to communicate to a primary target a threat of violence so as to coerce the primary target into behaviour attitudes through intense fear or anxiety in connection with a desired power (political) outcome"⁶³⁸.

Although of course, this author would insist that the immediate victim was an 'illegitimate' target.

Therefore this author's definition can be seen to include, albeit not in so many words, the elements of "Victim-target differentiation" and "Demands made on third parties", noted within 37.5% and 4% of the 109 definitions analysed by Schmid⁶³⁹. This author would therefore go

⁶³⁶ After Schmid who does not use the term 'often'. Schmid A.P. and Jongman A.J. *Political Terrorism: A new guide to actions, authors, concepts and databases*. (SWIDOC. Amsterdam. 1988.). p8.

⁶³⁷ Note the difference between my definition of genocide and the UN's all embracing one. Genocide was defined as meaning any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group:

"(a) Killing members of the group;
(b) Causing serious bodily or mental harm to members of the group;
(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(d) Imposing measures intended to prevent births within the group;
(e) Forcibly transferring children of the group to another group."

⁶³⁸ Nef J. 'Some Thoughts on Contemporary Terrorism' in Carson J. (ed.). *Terrorism in Theory and Practice*. (The Atlantic Council of Canada. Toronto. 1978.). pp3-31. p10.

⁶³⁹ Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland. Amsterdam. 1984.). Table 5. p76-77.

along with the first part of Schmid's claim that: "the victim - target differentiation is an important if not the most important specific feature of terrorism"⁶⁴⁰. A view which Schmid claimed there was "considerable support" for. It would also go along with the view that terrorism involves an act of "Coercion, extortion, induction of compliance", "Intimidation", also mentioned in Schmid's table⁶⁴¹, although at this stage of the process these criteria are no longer necessary, whilst coercion is perhaps a little too broad. The definition can also be seen as to acknowledge, if not incorporate, other elements noted in Schmid's list notably those of "Fear, terror emphasised", the "Publicity aspect" and "Symbolic aspect, demonstration"⁶⁴², and here seems an appropriate place to address each of them.

⁶⁴⁰ Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland. Amsterdam. 1984.). p110.

⁶⁴¹ "Coercion, extortion, induction of compliance" was mentioned in 28% of the 109 definitions analysed by Schmid, and "Intimidation" was noted within 17%. They were ranked 10th and 14th respectively. Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland. Amsterdam. 1984.). Table 5. p76-77.

⁶⁴² "Publicity aspect" was mentioned in 21.5% of the 109 definitions analysed by Schmid and was ranked 11th, "Demands made on third parties" was ranked at 22nd and was cited in 4% of the definitions, whilst "Symbolic aspect, demonstration" was ranked at number 17 and cited in 13.5% Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland. Amsterdam. 1984.). Table 5. p76-77.

Terror and Terrorism.

It is unsurprising that the grouping "Fear, terror emphasised" was noted in 51 per cent of respondents definition of terrorism, lying third behind the terms violence (or force) and political⁶⁴³. It also seems the appropriate place to mention a rather ambiguous element noted in Schmid's list, that of "(Psych.) effect and (anticipated) reactions"⁶⁴⁴, which is not incorporated precisely because of its vague meaning. The two elements can be seen to come together in Aron's famous claim that: "an action of violence is labelled "terrorist" when its psychological effects are out of proportion to its purely physical result"⁶⁴⁵. A view which has led some to see terrorism as a form of psychological warfare⁶⁴⁶. Again whilst this author is sympathetic to including this element, 'terror' is not considered as an essential requirement to this author's definition of terrorism for a number of reasons. Firstly, as Maley noted terror and violence have much in common, but not all violence qualifies as terror, it depends on the prevailing norms within a society, for it is these norms that determine the character of the general psychological reaction prompted by a particular action⁶⁴⁷. Thus not only do we have different thresholds of fear, but as Thackrah noted, the response to an act of terrorism can vary greatly depending on the danger of repetition and degree of identification with the victim. If the observer's identification is not with the victim but with the target of the terrorist it is unlikely to be terror, and if the identification of the

⁶⁴³ Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland. Amsterdam. 1984.).Table 5. p76-77.

⁶⁴⁴ "(Psych.) effect and (anticipated) reactions" was noted by 47% of the respondents and ranked 5th. Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland. Amsterdam. 1984.).Table 5. p76-77.

⁶⁴⁵ Aron R. *Peace and War* (Weidenfeld and Nicolson. London. 1966.). p170 cited in Vincent R.J. 'Introduction' in Freedman L., Hill C., Roberts A., Vincent R. J., Wilkinson P. and Windsor P. *Terrorism and International Order* (Routledge. Kegan Paul.1986.). pp1-6. p1.

⁶⁴⁶ Wardlaw for example wrote "[t]his work is concerned with the employment of terror as a weapon of psychological warfare for political ends". Wardlaw G. *Political Terrorism: Theory, Tactics and Countermeasures*. (Cambridge University. Press. Cambridge. 1982.). p9.

⁶⁴⁷ Maley W. 'Social Dynamics- The Disutility of Terror: Afghanistan, 1978-1989' in Bushnell P.T., Shlapentokh V., Vanderpool C.K. and Sundriam J. (eds.) *State Organized Terror* (Westview Press. Oxford. 1992). pp113-131. p113.

observer is with the terrorist, it may be euphoria⁶⁴⁸. Secondly one must realise, as David George did, that to say that whoever terrorises is *ipso facto* a terrorist is either an etymological confusion, or else an arbitrary stipulation of meaning⁶⁴⁹. Thus any attempt to quantify terrorism purely by studying terror wherever it is produced like Aron's, will run into great difficulties. As David George noted there are such acts which terrorise no one. They include expressivist bombings of buildings and similar properties which are carried out because of their symbolic significance to the terrorist⁶⁵⁰. Conversely whilst the term terrorism does not refer to any or all actions that produce terror, neither does it automatically exclude all actions that do not produce terror. It is the purpose of the act, the aim behind it, rather than its effects, that is the key characteristic in identifying the perpetration of an act of terrorism.

Any attempt then to include elements of the outcome of terrorism in the definition is both unnecessary and confusing⁶⁵¹. However as Levy and Ross have noted there is a practical problem with this emphasis on labelling acts of terrorism in accordance with the criteria of intent. In that given many objectives, immediate and long term it is difficult to sort out the goal of any one action, or even series of actions⁶⁵². Yet some indication of the purpose is unavoidable. To take an analogy that Schmid and Jongman made, it would be difficult to distinguish surgery from mutilation or torture if no purpose were given⁶⁵³. Thus, excluded from any definition are all actions that are not intended to produce such fear but that are aimed "solely or primarily" toward "physical

648 Thackrah J.R. *The Encyclopedia of Terrorism and Political Violence*. (Routledge, Kegan and Paul. London. 1987.). p57.

649 George D. 'Terrorism or Freedom Fighter' in Warner M. and Crisp R. (eds.) *Terrorism, Power and Protest*. (Edward Elgar. Aldershot. 1990.). pp54-67. p.56.

650 George D. 'Terrorism or Freedom Fighter' in Warner M. and Crisp R. (eds.) *Terrorism, Power and Protest*. (Edward Elgar. Aldershot. 1990.). pp54-67. p.56.

651 Merari cited in reply to his questionnaire by Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland. Amsterdam. 1984.). p10.

652 Levy J. and Ross P. 'The State of Political Violence in Latin America'. *Australian Quarterly*. Vol. 58 (3).1987. pp269-277. p265.

653 Schmid A.P. and Jongman A.J. *Political Terrorism: A new guide to actions, authors, concepts and databases*. (SWIDOC. Amsterdam. 1988.). p11.

harming" or toward "elimination" of the immediate victim, including assassination or genocide⁶⁵⁴.

⁶⁵⁴ Duvall R.D. and Stohl M. 'Governance by Terror' in Stohl M. (ed.) *The Politics of Terrorism*. (3rd ed. Marcel Dekker. New York. 1988.).pp231-272. p235.

Publicity.

As for the element of publicity, noted within 21.5% of the definitions this element has been singled out by many authors including Brian Jenkins who used the metaphor of 'terrorism as theatre' to express his view that "Terrorists want a lot of people watching and a lot of people listening and not [necessarily] a lot of people dead"⁶⁵⁵. Whilst Hacker tried to quantify this view by writing: "if you could cut out the publicity, I would say you could cut out seventy five percent of the national and international terrorism"⁶⁵⁶. However whilst all acts of terrorism crave publicity in that a message needs to be communicated to an audience, they do not all crave publicity in that they want everyone else to know all of the time. It has been said that this latter point is especially true of the terrorism of the State.

It is because the terrorist hopes to influence the behaviour of a target or an audience other than the immediate victims, that the victim is often described as being "symbolic". The idea of such actions being symbolic was found within 13.5% of Schmid's 109 definitions as part of the category "Symbolic aspect, demonstration"⁶⁵⁷. Unfortunately whilst

⁶⁵⁵ Jenkins B.M. 'International Terrorism: A New Mode of Conflict' in D.Carelton and C. Shaerf (eds) *International Terrorism and World Sceurity* (Croom Helm. London. 1975.). p15. In a similar manner Crenshaw claimed that, "[t]he most basic reason for terrorism is to gain recognition or attention" Crenshaw M. 'The Causes of Terrorism' *Comparative Politics* July 1981.p386. (no other reference) cited by Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland. Amsterdam. 1984.). p214.

⁶⁵⁶ Statement of Dr. F. Hacker 14 August 1974 in US Congress House Committee on Internal Security Hearings. Part. 4 93rd Congress. 2nd. Session. Washington D.C. GPO. 1974 p3030. cited by Kupperman R.H. and Trent D.M. *Terrorism Threat, Reality, Responses*. (Hoover Institute. Stanford. Ca 1979.). p421 Cited by Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland. Amsterdam. 1984.). p221 also Watson's statement that terrorism must not be defined only in terms of violence, but also in terms of propaganda for the two are in operation together. Watson F.M. *Political Terrorism: The Threat and the Response*. (Robert b. Luce. Washington D.C. 1976.). p15 cited by Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland. Amsterdam. 1984.). p219.

⁶⁵⁷ Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland. Amsterdam. 1984.) Table 5. p76-77. Young for example wrote "the terrorist group employs violence to intimidate and promote fear among certain people. Generally, these people will be symbolic or representative of some policy or sector of the populace which the terrorist wishes to attack". Young R. *Revolutionary Terrorism, Crime and Morality*'. *Social Theory and Practice*. Vol. 4.

there must be some connection between the actual victim and the audience whose behaviour the terrorist hopes to affect (be it to modify or to remain the same) the author prefers not to include the requirement of the victim being symbolic for it is too vague a description of the relationship between the two. It generally fails to add anything to the description whilst it could narrow it if the analyst could not find any symbolic connection between the two. Whilst the demonstration aspect is considered to have been covered within a previous section on target-victim differentiation.

Interestingly it is this process of communication and the victim-target differentiation which highlights the necessity for claiming that the immediate victim of an act of terrorism must be described as an illegitimate one, for without this form of discrimination it would be impossible to distinguish an act of terrorism from an act of war which also contains the process of communication and the victim-target differentiation. That the purpose of the threat or use of violence in war is also to instil fear in a target watching in order to modify its behaviour becomes obvious when one remembers Clausewitz's assertion that success within war could be achieved by one of two means. The first was the use of physical force to destroy the enemy's war fighting capability i.e. its armed forces. The second was the (threat or) use of physical force to destroy the enemy's will to continue the fight. A fact that allowed Napoleon, who so influenced Clausewitz the author of this commonly cited phrase, to declare that "the morale is to the physical as three is to one".

Those who would attempt to distinguish between 'war' and 'terrorism', without differentiating between the type of targets, would have difficulty in distinguishing an act of war from an act of terrorism, for if the purpose of an act (or even threat) of war is simultaneously to instil terror into one's victims and their leaders in order to destroy both their wills to fight, then an act of war also fits this latest version of the terrorism equation. The crucial difference between the two is that in acceptable acts of political violence 'war' the instrumental target (victim) are considered as combatants, whilst in an act of terrorism the immediate victim (or instrumental target) are non-combatants. The

importance of the process of 'communication' within an act of terrorism has been therefore overstated, for without distinction as to targets the expression 'propaganda of the deed' is as valid a description of 'acts of war' as it is an act of terrorism. It is in this way that many authors have overlooked the place of communication within other acts of political violence.

In addition without this identification of the communication process, it would be impossible to distinguish those acts of war which merely aim to destroy the enemies capability to fight (their armed forces) from (most⁶⁵⁸) acts of genocide which merely aim to destroy an illegitimate target.

With this last qualification in mind it becomes possible to produce an initial definition of terrorism, one that covers the actions of 'sub-state' groups (and the actions of states outside their own area of jurisdiction. The two being equated on the grounds that a state has as much right to use violence in some other states are of jurisdiction, as a substate group has within the jurisdiction of a state). So when carried out by non-state organisations anywhere (or the state outside its area of jurisdiction) terrorism can be described as:

"the threat or use of violence by organisations for political purposes when such actions are intended to modify the behaviour of target(s) wider than the immediate illegitimate victim(s)".

The final issue to be decided then is the who, what constitutes a legitimate and an illegitimate target, or how does one make such a distinction.

However before going on to examine the basis for the discrimination and for identifying the legitimate targets, this seems a logical place to examine the remaining elements listed by Schmid which are neither examined in the following section nor incorporated within the definition. In light of the importance of the principle of discrimination to this author's definition of terrorism it is easy to see how various

⁶⁵⁸ By definition genocide would have to include the killing of any members of the genus who took up arms against it.

terrologists incorporate any of the elements of "Arbitrariness; impersonal, random character'⁶⁵⁹ and/or "Incalculability, unpredictability, unexpectedness of occurrence of violence" found within 21% and 9% of those 109 definitions identified by Schmid respectively⁶⁶⁰. Whilst there is some similarity between these latter notions and this author's insistence on including the idea of illegitimate targets within any definition, this does not mean that these other terms should be used. The main reason that the terms "Arbitrariness" or "random" are not included is that victims of terrorist attacks are not arbitrarily or randomly chosen, otherwise the supporters or even members of the terrorist group would occasionally be the victims of the terrorist's own campaign. It is more accurate to say that the particular class of persons to be targeted by the terrorist has been carefully selected albeit in a manner that is considered too broad and indiscriminate by most people including this author. The broad group of those attacked is therefore both broadly predictable and selective, even though the individuals targeted within this group are not. It is therefore from the perspective of the victim (and other non terrorists) the selection as victims appears random or arbitrary, because they pose no direct military threat to the terrorists. In this sense it is easy to see how the terms contained with Schmid's category "Incalculability, unpredictability, unexpectedness of occurrence of violence" have occurred. But the violence of the terrorist is far from incalculable, unpredictable, or unexpected in relation to their political goals, although the terrorist may try and make their violent attacks upon that large group whom they do not mind killing as incalculable, unpredictable, or unexpected as possible in order to avoid being caught. In this way outsiders and neutrals might be caught up within the

⁶⁵⁹ Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland. Amsterdam. 1984.) and ranked 12th Table 5. p76-77. For example Kupperman and Trent who wrote that "[t]errorist violence is by its nature random". Kupperman R.H. and Trent D.M. *Terrorism Threat, Reality, Responses*. (Hoover Institute. Stanford. Ca 1979.). p14 cited by Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature*. (North Holland. Amsterdam. 1984.). p78.

⁶⁶⁰ Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland. Amsterdam. 1984.), and ranked 18th. Table 5. p76-77. For example Galtung J. 'Zur strategie der Nichtmilitarischen Verteidigung - Probleme und Lösungsvorschläge' in Galtung J. *Andersveteidigen* (Rowablt. Reinbek. 1982.). p238 wrote that terrorism was "the unpredictable use of violence in order to compel submission" cited by Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland. Amsterdam. 1984.). p78.

terrorists apparently random act of violence but they cannot logically constitute the primary target of the terrorist's violence. This is because if the terrorists were to deliberately target only those who were outside the conflict or neutral to it, it would be very unlikely for such action to concern their audience, whilst they might produce a new enemy who the terrorist could then not target by definition.

Various authors, including Thornton, and Boire, have emphasised the extraordinary nature of the terrorist's attacks within their definition of terrorism⁶⁶¹. Indeed for Wardlaw it is this "extranormalness" which sets terrorism apart from all other forms of force employment⁶⁶². Yet Wardlaw also correctly suggests that such writers are then faced with the difficulty of defining 'extranormal' which few do. The importance of this is highlighted by Schmid identification of five ways of conceptualising extranormality⁶⁶³.

⁶⁶¹ Thornton wrote 'in an internal war situation, terror is a symbolic act designed to influence political behaviour by extranormal means entailing the use or threat of violence'. Thornton T.P. 'Terror as a Weapon of Political Agitation' in Eckstein H. (ed). *Internal War Problems and Approaches*. (The Free Press of Glencoe, Collier Macmillan. London. 1964.). pp71-100. p73.

⁶⁶² Wardlaw G. *Political Terrorism: Theory, Tactics and Countermeasures*. (Cambridge Univ.Press. Cambridge. 1982.). p10.

⁶⁶³ Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature*. (North Holland. Amsterdam. 1984.). p107-11. His identification of 5 groups is even greater than that of Sederberg who identified three i.e. the weapons chosen, the time and place of the threat, or the covert nature of the attack is extraordinary. Sederberg P. *Terrorist Myths: Illusion, Rhetoric and Reality*. (University of Southern California. Prentice Hall. New Jersey. 1989.). p26.

Extranormality.

The first of the five ways of conceptualising extranormality identified by Schmid is "The Weapon Utilised for the Terror-Inducing Act is Extranormal". It is the equivalent of what this author describes as illegitimate means. Its inclusion within any definition of terrorism seems unconvincing for a number of reasons. The first is whilst it fits the prohibition of particular weapons demanded by the laws of wars, this author has yet to come across anyone insisting that it constitutes part of a definition of the term terrorism. Secondly Schmid himself noted that most terrorist acts are committed with quite common weapons so that this category cannot represent a necessary property of terrorism⁶⁶⁴. The second way by which extranormality might be conceptualised- "The Nature of the Terrorist Act Shows Extranormal Features"- is a more credible element to include in any definition. As Wardlaw put it in a passage that links so many elements of the terrorism formula:

"[w]hat differentiates terrorism from other forms of violence is its unexpected nature, its element of surprise and shock. It is this quality which makes terrorism frightening rather than the actual physical impact of any incident"⁶⁶⁵.

However whilst it may be true that terrorist acts often involve acts such as knee capping, or mutilating the victim of a ransom demand, again such an inclusion of this element would unnecessarily restrict any definition of the term terrorism as many acts of terrorism do not involve such extranormal features. This reasoning is also an apt excuse for excluding the notion of extranormal when it means "The Time and Place of a Terrorist Attack are Extranormal", for many acts of terrorism are not geared to primetime television. Schmid's fourth suggestion-"The Clandestine, Covert Nature makes Terrorism Extranormal"- is the equivalent of what this author terms an illegitimate mode (perfidy) and will be evaluated later. Finally the necessity for including extranormality when it means "The Deliberate Violation of Basic Human

⁶⁶⁴ Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (Amsterdam, North Holland. 1984.). p107.

⁶⁶⁵ Wardlaw G. *Political Terrorism: Theory, Tactics and Countermeasures*. (Cambridge Univ.Press. Cambridge. 1982.). p16.

Rules of Conduct is Extranormal" is rejected for the notion of "Basic Human Rules" is too vague and therefore too broad. This said, the author is sympathetic to the notion generally, indeed his own conception of state terrorism is based upon the 'norm' of discrimination in warfare and punishment in law enforcement.

It is therefore no surprise that this rather ambiguous notion-"Extranormality. In breach of accepted rules, without humanitarian constraints"- was mentioned within 30% of the 109 definitions he had examined.⁶⁶⁶ It is primarily because of its ambiguous nature that the word is not considered as an appropriate term for inclusion into a definition.

The final element noted by Schmid which is neither examined in the following section or incorporated within the definition is that of "Method of combat strategy, tactic"⁶⁶⁷. Both the idea of terrorism being a strategy or terrorism being a tactic is not included because neither can deal with all of acts of the terrorist state for the same reason that the element "Criminal" is excluded. Both the idea of terrorism as a tactic (or strategy), or terrorism as crime, imply that terrorism should be approached from the position that it is either solely war or solely crime, whilst excluding the other, when in fact it can be either depending upon the circumstances. This is no more obvious when it comes to assessing the State's use of violence against its own citizens, and abroad. However first it is necessary to return to the issue of discrimination and how one distinguishes between legitimate and illegitimate targets.

⁶⁶⁶ Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (Amsterdam, North Holland. 1984.). Table 5.p76-77 and ranked 9th.

⁶⁶⁷ Noted within 30.5% and ranked 8th. Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (Amsterdam, North Holland. 1984.).Table 5. p76-77.

Making a distinction.

The principle of discrimination within targeting raises a number of questions, the most important of which is 'Upon what basis does one discriminate?', from which flows 'Who constitutes a 'legitimate' and 'illegitimate' target for attack?'. There is also the related question of 'What terms should be used to describe the illegitimate target?', for when examining the literature which has attempted to answer these questions, one is struck with is the variety of terms that are used to describe illegitimate targets, all of which have slightly different implications. Some authors use either of the terms 'innocent' 'civilian' or 'non-combatant' to describe such targets, whilst others use them interchangeably. The term 'innocent' was included within 15.5% of the 109 definitions analysed by Schmid⁶⁶⁸. He also noted that the terms "Civilians, non-combatants, neutrals, outsiders as victims" were included within 17.5% of the definitions he analysed⁶⁶⁹.

In one sense it is not surprising that the terms are often used synonymously. Uniformed soldiers are often considered combatants for they are armed. This said, non-combatants need not be civilians, they are often found in uniform as prisoners of war⁶⁷⁰, chaplains or medics. Civilians are often considered illegitimate targets for they are not armed. A fact which sometimes gains them the label of innocent. Schmid's comment that to his knowledge not one author has made an attempt to develop criteria for establishing this innocence⁶⁷¹, surely only applied to the terrorologists at the time of writing. Yet many authors are willing to claim that all civilians are not necessarily

⁶⁶⁸ As part of the category "Innocence of victims emphasised". Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland. Amsterdam. 1984.) and ranked 15th. Table 5. p76-77. Oruka for example wrote "terrorism is the intentional (and usually violent) infliction of pain or harm upon the innocent or else it is punishment which goes beyond a reasonable maximum". Oruka O.H. "Legal Terrorism and Human Rights" *Praxis International*. Vol.1 1982. pp376-385. p376.

⁶⁶⁹ Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland. Amsterdam. 1984.) and ranked 13th. Table 5. p76-77.

⁶⁷⁰ Sederberg P. *Terrorist Myths: Illusion, Rhetoric and Reality*. (University of Southern California. Prentice Hall. New Jersey. 1989.). p25.

⁶⁷¹ Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland. Amsterdam. 1984.). p79.

illegitimate targets. Probably the most frequently cited examples are politicians who whilst unarmed 'order' troops into battle, and those munitions workers and farmers who are involved in supplying the armed forces with weaponry or food, all of whom have been considered as less than 'innocent'.

Supporters of such indiscriminate violence have argued that in an age of 'revolution', 'government by the people', 'totalitarianism' and/or 'total warfare' no one is innocent. When this position is taken by those already established in authority they are known as 'realists', although perhaps the most infamous expression of this view was made by George Habash, leader of the 'terrorist group' The Popular Front for the Liberation of Palestine, when he declared that "[i]n today's world no-one is 'innocent' and no one is a neutral"⁶⁷². Some, and not just pacifists, have taken the opposite view when they question whether conscripted soldiers (or even professional) soldiers can be considered to be guilty of something. In addition to these issues there are the secondary questions such as are off duty members of the armed forces legitimate targets?. An issue that is particularly relevant to the position of those in guerrilla armies or minutemen style militia.

To decide whether or not one the author's definition will use the term non-combatants, civilians or innocents to describe unacceptable or illegitimate victims, it is useful first of all to examine the substance or purpose of the discrimination part of the 'laws of war'. The immediate question to be asked then is 'What is the nature of the rules which govern the issue of discrimination?' for there is no doubt that to a certain degree the differences in choice of terminology reflect genuine philosophical disputes about how and where to draw the lines between various categories⁶⁷³. It is also true that debates on the issue of

⁶⁷² Habash in Wilkins B T. *Terrorism and Collective Responsibility*. (Routledge. London. 1992.). p66. (no other reference). In full he said, "In the age of revolution, of peoples oppressed by the world's imperialist system there can be no geographical or political borders or moral limits to the operations of the people's camp. In today's world no-one is 'innocent' and no one is a neutral" Cited in Phillips R.L. 'Combatancy and Noncombatancy and Noncombatant Immunity in Just War Tradition' in Kelsay J. and Johnson J.F. *Cross, Crescent and Sword: The Justification and Limitation of War in Western and Islamic Tradition*. (Greenwood Press. Westport, Connecticut. 1990.).pp179-195. p187-8.

⁶⁷³ Clark I. *Waging War: A Philosophical Introduction*. (Clarendon. Oxford. 1988.). p92.

discrimination are complicated by the opportunities afforded to expand or contract it by interpretation of its component elements⁶⁷⁴. The important point, however, is whatever reasoning is finally chosen, consistency is the key. The question of who qualifies for each label poses no special problem for this study as long as the reasoning behind them is consistently applied regardless of the motive of the perpetrator. Here then this author will attempt to explain the rationale behind both his working definition of 'illegitimate' target, and his preferred label.

A good starting place when looking to find the fine detail of such a distinction is the area of international law. Despite the fact that there are the problems relating to both international law generally and to the applicability and meaning of specific treaties, various pieces of the laws of armed conflict distinguish between legitimate targets, although they of course vary in detail from one another. For example in a book entitled *International Law in Ancient India*, Viswanantha wrote that an ancient Indian text stated that those not subject to the exigencies of battle included:

"[t]hose who look on without taking part, those affected with grief....those who are asleep, thirsty or fatigued or are walking along the road, or have a task in hand unfinished, or are proficient in fine art"⁶⁷⁵.

These parameters are of course considered too wide and some too vague, by this author, for some of them appear to have little connection with the purpose of organised political violence. This latter point cannot be said of those pieces of contemporary international law. The 1907 Hague Convention IV Respecting the Laws and Customs of War on Land, for example, which is often considered customary law of war contains Article 1 which states that:

"The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions:

1. To be commanded by a person responsible for his subordinates;
2. To have a fixed distinctive emblem recognisable for his subordinates;

⁶⁷⁴ O'Brien W. *The Conduct of Just and Limited War*. (Praeger. New York. 1981.). p42.

⁶⁷⁵ Viswanantha S.W. *International Law in Ancient India* (Bombay. 1925.). p156 cited by Walzer M. *Just and Unjust War*. (Allen Lane. London. 1978.). p46.

3. To carry arms openly; and
4. To conduct their operations in accordance with the laws and customs of war;

Similarly the Geneva Conventions of 1949 stated that to be a combatant, an individual would have to be:

- "(a)....commanded by a person responsible for his subordinates;
- (b)....having a fixed distinctive sign recognizable at a distance;
- (c)....carrying arms openly;
- (d)....conducting their operations in accordance with the laws and customs of war"⁶⁷⁶.

Unfortunately these requirements are often confused with the wearing of uniforms for as De Lupis rightly claimed there is no textual support for the idea that members of regular armed forces should wear uniforms. For many commentators on war and the just war tradition the wearing of a uniform is a key requirement for the creation of a legitimate act of war. This tendency is reflected in the literature on terrorism where its absence is often seen as an important element in identifying an act terrorism. Although this requirement to wear a military uniform is usually expressed as the idea that terrorism is a form of 'covert' warfare. Schmid himself notes clandestine methods in his 1988 definition⁶⁷⁷. Indeed the covert nature of an act was alongside the term "Clandestine" ranked 19th by Schmid in his analysis of the

⁶⁷⁶ Article 13 of both the Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces at Sea, Geneva Convention II for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, and Article 4 of Geneva Convention III Relative to Treatment of Prisoners of War.

⁶⁷⁷ For Schmid and Jongman "Terrorism is an anxiety -inspiring method of repeated violent action, employed by (semi-) clandestine individual, group, or state actors....". Schmid A.P. and Jongman A.J. *Political Terrorism: A new guide to actions, authors, concepts and databases*. (SWIDOC. Amsterdam. 1988.).p28. Gibbs for example includes the requirement of "secretive" within his definition. Gibbs J.P. 'Conceptualization of Terrorism'. *American Sociological Review*. Vol. 54. 1989. pp329-340. p331. Hughes similarly wrote: "By terror and terrorism I mean a war in which a secret army- one whose members have other covert occupations, wear no uniforms and do not otherwise admit their membership - spreads fear". 'Terrorism and National Security'. *Philosophy* Vol. 57. p5. In contrast Lodge claims that "state terrorism is the overt use of violence, coercion and torture as normal government'. Lodge J. (ed.) *Terrorism: A Challenge to the State*. (Martin Robertson. Oxford. 1981.). p10.

definitional elements found within 109 definition, noted within a surprisingly low 7% of the definitions⁶⁷⁸.

There is no doubt that if a member of a political organisation who carried out an act of political violence were to disguise himself as an innocent peasant and overtake a group of soldiers and turn around to fire on them, this act would constitute a war crime⁶⁷⁹. It may enhance the prospects of success, but it would also contravene the prohibitions of perfidy and treachery⁶⁸⁰. For many just war theorists the purpose of these rules of discrimination is to specify for each individual a single identity; he must be a soldier or a civilian. To attack stealthily or deviously without warning and in disguise is to violate the implicit trust upon which the war convention rests is that soldiers must feel safe among civilians if civilians are ever to be safe from soldiers⁶⁸¹. For as Clark noted:

"[u]niforms perform a dual function both by way of liability and a protection. They are a liability in so much as they advertise the wearers availability as a legitimate target of war: They also serve as protection by guaranteeing the wearer certain rights, encoded in the laws of war"⁶⁸²

For some authors the logic of this is that the use of perfidy by one side makes that side's civilian population a legitimate target for an attack, for those who have been attacked by the enemy disguised as civilian can no longer trust them⁶⁸³. Although for others such as Fotion and Elfstrom the deception inherent in fighting without a uniform is not in itself immoral, it is only deception relative to the standards established

678 Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (Amsterdam, North Holland. 1984.). Table 5. p76-77.

679 Bindschelder R.D. 'A Reconsideration Of The Law of Armed Conflict' in Carnegie Endowment for International Peace. *The Law of Armed Conflict* (Carnegie Endowment for International Peace. New York. 1971.). pp1-62. p43-4.

680 Campbell C.S. 'Moral Responsibility and Irregular War' in Kelsay J. and Johnson J.F. *Cross, Crescent and Sword: The Justification and Limitation of War in Western and Islamic Tradition*. (Greenwood Press. Westport, Connecticut. 1990.). pp103-128. p114.

681 Walzer M. *Just and Unjust War*. (Allen Lane. London. 1978.). p182.

682 Clark I. *Waging War: A Philosophical Introduction*. (Clarendon. Oxford. 1988.). p90.

683 By shifting the burden of discrimination on their enemies. See Walzer M. *Just and Unjust War*. (Allen Lane. London. 1978.). p186. Also Ramsey P. *The Just War: Force and Political Responsibility*. (University Press of America. Lanham MD. 1983.). p435.

by establishment powers⁶⁸⁴. For them: "[t]he moral problems covering the use of organised destructive force will remain the same whether employed by military or neo-military organisations"⁶⁸⁵. Indeed since the production of the more recent, albeit less popular, Protocols to the Geneva Conventions of 1977, the four points noted by both the Hague and Geneva Conventions have become two - that is having a fixed distinctive sign recognisable at a distance; and carrying arms openly - or even just one. According to De Lupius:

"Protocol I of 1977 even recognizes that it is not always possible for guerrillas to distinguish themselves from the civilian population and provides that they will still retain the status of [lawful] combatants provided they carry arms openly during each military engagement and during such time as they are visible to the adversary while not engaged in military operations preceding an attack....Due to the difficulties caused by the application of the Geneva Conventions with respect to the requirement of 'openly' carried arms, this condition has now been revised to imply that arms must be carried openly during actual fighting"⁶⁸⁶

This author takes the view that the failure of a those engaged in perpetrating an act of violence to carry their arms openly and to wear a fixed emblem that is recognisable from a(n undefined) distance, constitutes a war crime. This raises the question of whether such actions either, automatically constitute an act of terrorism?, or are an essential requirement for the application of the label 'terrorist?'. For this author the answer to both these questions is no, and therefore the view that secrecy is an essential element in defining terrorism is rejected. The reasons for this are numerous.

The first can be seen to be derived from the view held by various just war theorists including Clark, that "[t]he wearing of a uniform is not sufficient to define the category of combatant"⁶⁸⁷. A point that comes to life with Ramsey's assertion that people in command positions are

⁶⁸⁴ Fotion N. and Elfstrom G. *Military Ethics: Guidelines for Peace and War*. (Routledge, Kegan and Paul. London. 1986.). p213.

⁶⁸⁵ Fotion N. and Elfstrom G. *Military Ethics: Guidelines for Peace and War*. (Routledge, Kegan and Paul. London. 1986.). p213.

⁶⁸⁶ De Lupis I.D. *The Law of War*. (Cambridge University Press. Cambridge. 1987.). p113-114.

⁶⁸⁷ Clark I. *Waging War: A Philosophical Introduction*. (Clarendon. Oxford. 1988.). p92.

combatants even though they wear tweed suits rather than military uniforms; a man still in uniform, after he surrenders is not one of the combatants that it would be just to repress (although he does suggest that in a fluid jungle war situation where it is impossible to insure that he will stay surrendered); and that closeness of military co-operation may define a civilian as a combatant⁶⁸⁸. On this latter point Ramsey is joined by others including Walzer who also allowed attacks on munitions workers⁶⁸⁹.

The second reason for claiming that the clandestine, covert nature of the act is not considered as an essential part of a definition of terrorism is that its inclusion would also include things such as the actions of undercover units and agents that are traditionally not considered as acts of terrorism. Thirdly, it is questionable whether or not there is any practical value in the requirement of combatants to wear a distinctive emblem recognisable from a distance, when the victim of their violence may be situated many miles (or even continents) apart. Finally, despite its criminal nature within the laws of war, the decision not to include the requirement of wearing a distinctive sign is not considered as morally reprehensible as the deliberate targeting of non combatants. They are arguably more likely to be refused this if there was no apparent connection between the victim of the violence and the political cause. Indeed whilst the latter requirement might mean that an individual is refused political asylum or even extradited, the issue of wearing a disguise is far less important and indeed it could be argued that states tacitly accept it in their habit of swapping 'spies'.

On the issue of identifying legitimate targets then, this thesis can be seen to be line with those such as Fotion and Elfstrom who declared that too much can be said on behalf of the uniform, even if it is a useful sorting device⁶⁹⁰. It is undoubtedly true that those in uniform should be treated differently from those not in uniform⁶⁹¹, but the key point is

688 Ramsey P. *The Just War: Force and Political Responsibility*. (University Press of America. Lanham MD. 1983.). p435

689 Walzer M. *Just and Unjust War*. (Allen Lane. London. 1978.). p146.

690 Fotion N. and Elfstrom G. *Military Ethics: Guidelines for Peace and War*. (Routledge, Kegan and Paul. London. 1986.). p212.

691 According to De Lupis, "[t]he principle of distinction is of importance. If a person fulfills the requirements for combatant status he is entitled to the 'rights' of a soldier, notably to enjoy prisoner of war status if captured, if he does not fulfil the

that the loss of immunity from attack is not limited to those in uniform. Legitimate targets are not restricted to those defined as 'lawful combatants' by the existing laws of war. One can attack both those who are attacking us and who are supplying them with the means (guns or ammunition) for such attacks⁶⁹², regardless of whether or not the enemy has engaged in perfidy. Or as Walzer put it, the relevant distinction was not between those who work for the war effort and those who do not, but between those who make what soldiers need to fight and those who make what they need to live like the rest of us⁶⁹³. Civilians bear no arms to threaten or harm anyone in contrast to the armed combatants who are legitimate targets only in, and because of the political violence and through whom the war is waged by belligerent parties. As armed agents of a belligerent they attack enemy combatants in order to disable them from further fighting. The exception to this rule is that of munitions workers and others involved in making what soldiers need to fight. Here the author goes along with Fotion and Elfstrom's notion of the immediacy of the threat. Those with weapons in or out of uniform can be shot close up⁶⁹⁴, whilst those partly assimilate civilians such as munitions workers can be killed in their factories but not in their homes, a view also taken by Walzer⁶⁹⁵. The criteria for identifying the legitimate targets will therefore be something like Phillips suggestion of:

"classes of people engaged in an occupation that they would perform whether or not a war were taking place, or services rendered to the combatants both in war and out are considered immune from direct attack and targeting"⁶⁹⁶.

requirement, he is an unlawful combatant and may be shot"De Lupis I.D. *The Law of War*. (Cambridge University Press. Cambridge. 1987.). p113

692 Phillips R.L. 'Combatancy and Noncombatancy and Noncombatant Immunity in Just War Tradition' in Kelsay J. and Johnson J.F. *Cross, Crescent and Sword: The Justification and Limitation of War in Western and Islamic Tradition*. (Greenwood Press. Westport, Connecticut. 1990.).pp179-195. p187.

693 Walzer M. *Just and Unjust War*. (Allen Lane. London. 1978.). p146.

694 Fotion N. and Elfstrom G. *Military Ethics: Guidelines for Peace and War*. (Routledge, Kegan and Paul. London. 1986.). p196.

695 Walzer M. *Just and Unjust War*. (Allen Lane. London. 1978.). p146.

696 Phillips R.L. 'Combatancy and Noncombatancy and Noncombatant Immunity in Just War Tradition' in Kelsay J. and Johnson J.F. *Cross, Crescent and Sword: The Justification and Limitation of War in Western and Islamic Tradition*. (Greenwood Press. Westport, Connecticut. 1990.).pp179-195. p187.

This brings the thesis back to the question of terminology, 'By what labels should the illegitimate targets of terrorism be described?'. The choice of this author is for 'innocent' for a number of reasons, in addition to the fact that certain authors have claimed that "[i]nnocence is the quintessential condition of terrorist victimology"⁶⁹⁷. The alternatives of civilian is too narrow for this would exclude those soldiers who have surrendered, and those who work in munitions factories. Whilst there is great sympathy for the use of the term combatants and non-combatants, the decision to choose 'innocents' over this can only be understood in relation to the aim of this part of the thesis which is to apply such a definition to the actions of the State, for unlike the term non-combatant, the term innocent is also used to refer to victims of the State's violence against its own citizens.

The term innocent is however not beyond criticism and in terms of the actions of the sub-state terrorist (and State abroad), as Norman noted, what is meant here cannot be moral innocence in any general sense. There is no reason to suppose that civilians are in general morally superior to members of the armed forces. The bombing of a town may kill all sorts of morally disreputable individuals⁶⁹⁸. Instead the meaning of the term is used by reference to the etymology of the term 'innocent, as the negative of the Latin word *nocens*, which means 'harming'. Kenny for example wrote that:

"The most important of the traditional condition for a just war was that it should not involve the deliberate killing of non-combatants. This was sometimes called the prohibition on 'killing the innocent', but the innocence in question had nothing to do with moral guiltlessness or lack of responsibility: the 'innocent' were those who were not *nocentes* in the sense of engaged in harming one's own forces"⁶⁹⁹.

⁶⁹⁷ Friedlander R.A. *Terrorism and the Law: What Price Safety?*. (IACP. Gaithersburg, MD. 1980.). p3 cited by Schmid A.P. *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (North Holland. Amsterdam. 1984.). p78

⁶⁹⁸ Norman R. *Ethics, Killing and War*. (Cambridge University Press. Cambridge. 1995.). p161.

⁶⁹⁹ Kenny A. *The Logic of Deterrence*. (London. 1985.). (no publisher noted) cited by Norman R. *Ethics, Killing and War*. (Cambridge University Press. Cambridge. 1995.). p168.

Similarly Nagel wrote: "we must distinguish combatants from non-combatants on the basis of their immediate threat or harmfulness"⁷⁰⁰. What is wrong with attacking civilians in a political conflict is that the attack on them cannot be justified in terms of what they are doing⁷⁰¹.

After identifying what constitutes an illegitimate target the issue then becomes how does one incorporate the meaning of terrorism as expressed within this preliminary definition of terrorism as: "the threat or use of violence by organisations for political purposes when such actions are intended to modify the behaviour of target(s) wider than the immediate innocent victim(s)", into a wider definition that is also applicable to the actions of the State?. It is therefore to the concept of the State that the thesis now turns.

⁷⁰⁰ Nagel T. 'War and Massacre' *Philosophy and Public Affairs* Vol. 1. (1972.).p139-140. Similarly Walzer wrote innocent is a 'term of art' which means that they have done nothing and are doing nothing that entails the loss of their rights. Walzer M. *Just and Unjust War*. (Allen Lane. London. 1978.). p146.

⁷⁰¹ After Norman R. *Ethics, Killing and War*. (Cambridge University Press. Cambridge. 1995.). p174.

Chapter 5.

Terrorism and the State.

"The terrorist and the policeman both come from the same basket"

Joseph Conrad. *The Secret Agent*⁷⁰².

The State.

David Held noted in his book *States and Societies* : "[t]here is nothing more central to political and social theory than the nature of the State and nothing more contested"⁷⁰³. Indeed as far back as 1931, Titus managed to identify no fewer than 145 definitions in what he modestly called a "cursory examination" of the various meanings of the term! ⁷⁰⁴. A total which even surpasses the 109 definitions (of terrorism) identified by Schmid. This diversity of opinion has encouraged some contemporary authors to ridicule the notion of the State. For example in a sentence ominously reminiscent of a problem that plagues the definition of terrorism Ferguson and Mansbach asserted: "[w]hat is one person's 'state' is another person's 'government' and vice versa"⁷⁰⁵. A point which leads them to conclude that the concept of the State: "has so many meanings that it is practically useless as an analytical tool and a building block of theory"⁷⁰⁶. Yet ironically even Ferguson and Mansbach were forced to write: "[t]he present authors would certainly agree that a working definition is all that can be achieved"⁷⁰⁷. Conveniently this is all that this thesis requires for there is little doubt that a definition of the term the State could also constitute a thesis in

⁷⁰² Conrad J. *The Secret Agent*. (Penguin. Harmondsworth. 1963.). p64.

⁷⁰³ Held D. "Central Perspectives on the Modern State' in Held D. *et al. State and Societies*. (Martin Robertson Press. Oxford.1989.).p1-58. p1.

⁷⁰⁴ Titus C.H. 'A Nomenclatura' in *American Political Science Review*. Vol.25.(1). Mar.1931. p45 cited by Y.H.Ferguson and R.W.Mawbach. *The State, Conceptual Chaos and the Future of International Relations Theory*. (Lynne Rienner Press. London. 1989.). p39.

⁷⁰⁵ Ferguson Y.H. and Mansbach R.W. *The State, Conceptual Chaos and the Future of International Relations Theory*. (Lynne Reinneer. London.1989.). p20.

⁷⁰⁶ Ferguson Y.H. and Mansbach R.W. *The State, Conceptual Chaos and the Future of International Relations Theory*. (Lynne Reinneer. London.1989.). p1.

⁷⁰⁷ Ferguson Y.H. and Mansbach R.W. *The State, Conceptual Chaos and the Future of International Relations Theory*. (Lynne Reinneer. London.1989.). p21.

itself. The immediate question then is what conception of the State does this thesis adhere to?.

Like most works on international law and international relations this thesis accepts that the State can be identified as such, despite the problems inherent within the definition of the State, especially that of recognition. Both disciplines accept the idea of states existing *de facto*, even if the *de jure* legitimacy of the regime or government in power is not recognised. In this way the State is identified as an entity which has a defined territory, a permanent population is under the control of a government which engages in, or has the capacity to engage in, formal relations with other entities⁷⁰⁸. Its territory is defined as the geographical area within which it exercises sovereignty, and this is in itself determined by effective control maintained with the intention of permanency. Over this area the State has exclusive jurisdiction and can prescribe (and proscribe), adjudicate and enforce its laws⁷⁰⁹. It is this latter aspect of the state that is crucial to an understanding of this author's definition. Here the State is recognised as a result of the identification of a constitutional system including a judicial one in which the state uses violence to deter the breaking of its laws. As Gilbert put it: "[w]hat is required for a notion of [an] act of state is, of course the idea of a constitution within which such acts are performed"⁷¹⁰.

Like some, if not most definitions of the term 'the State' in social scientific analysis this author's working definition incorporates the Weberian notion that the State is characterised by legitimacy and a monopoly of the means of coercion within its area of domestic jurisdiction. Within Weber's classic definition of the State as a "relation of men dominating men, a relation supported by means of legitimate (i.e., considered to be legitimate violence) violence", political violence and the State are intimately bound together as part of the latter's *raison*

708 Wallace R.M.M. *International Law: An Introduction*. (Sweet and Maxwell. London. 1986.). p53.

709 Joynt C.B. and P.E. Corbett P.E. *Theory and Reality in World Politics*. (Macmillan Press. London. 1978.). p107.

710 Gilbert P. 'Political Suppression and the Violence of the State'. Paper presented at E.C.P.R. Workshops. Essex. 1991. p.15.

d'être ⁷¹¹. As a result of this, the State frequently enjoys a special treatment born of political socialisation and the power of ideology, and what is done in the name of protecting the State, the country or the leadership is often held up to a different measure⁷¹². Producing a double standard on internal violence, one for the State and the other for its opponents (although one should note that there are acceptable grounds for a less problematic double standard). In this way the legitimacy and power of the State tend to cloak any overt forms of its violence in different guises, such as arrest instead of abduction, imprisonment instead of hostage taking, execution instead of murder and coercive diplomacy instead of blackmail⁷¹³. This author then acknowledges a 'double standard' in his treatment of acts of violence perpetrated by sub-state political organisations and those perpetrated by the State *within* its area of jurisdiction. The reason being that such a double standard *cannot* be avoided, for it is inherent within the nature of the difference between the two political entities. Without the *a priori* ascription of legitimacy to (at least some of) the State's use of violence within the area of domestic jurisdiction, it would be impossible to identify the State and distinguish it from these other (less successful) political organisations. The validity of this latter statement can be seen in the conceptual analogy which has been constructed between the practices of punishment and terrorism. Boire for example noted that: "the practices of punishment and terrorism are intentional behaviour patterns pursued to achieve similar ends"⁷¹⁴. Walter also drew this analogy when he wrote:

⁷¹¹ Weber (no other reference) in Gerth H. and Mills C.W. *From Max Weber*. (Glencoe. Illinois. 1938.). p78.cited by Stohl M. 'National Interests and State Terrorism'. *Political Science*. Vol. 36 (1). July. 1984. pp37-52. p39.

⁷¹² Perdue W. *Terrorism and the State: A Critique of Domination Through Fear* (Praeger New York. 1989.).p13. Similarly Falk wrote, "[a]ny examination of official practices would disclose the adoption of a wide series of terrorist undertakings, veiled in secrecy and disguised by the antiseptic semantics of covert operations, low intensity warfare and indirect mode of conflict". Falk R. 'Revolutionaries and Functionaries. The Dual Face of Terrorism'in Kegley C.W.(ed.). *International Terrorism: Characteristics; Causes; Controls*. (St.Martin's. New York. 1990.). pp39-44.

⁷¹³ Crelinsten R.D. 'Power and Meaning: Terrorism as a Struggle over Access to the Communication Structure' in Wilkinson P. and Stewart A.M. *Contemporary Research on Terrorism* (Aberdeen University Press. Aberdeen. 1987.). pp419-452. p440.

⁷¹⁴ Boire M.C 'Terrorism Reconsidered as Punishment: Toward an Evaluation of the Acceptability of Terrorism as a Method of Societal Change and Maintenance'. *Stanford Journal of International Law*. Vol.20(1). 1984. pp43-143. Further depth to the analogy is produced by Beccaria's description that "the political end of punishment is to intimidate others" Beccaria (1964.p43) cited by Bean P. *Punishment: A Philosophical and Criminological Inquiry*. (Martin Robertson. Oxford. 1981).p30.

"[s]ince violent punishments do evoke fear and are often justified by their punitive deterrent value, it is sometimes hard to distinguish the administration of punishment from the process of terror".⁷¹⁵

Similarly Gibbs stated that his definition of terrorism would extend to the imposition of legal punishment by government officials to promote general deterrence⁷¹⁶. Whilst Goodhart asserted that if punishment cannot deter then we might as well scrap the whole of our criminal law⁷¹⁷. More specifically Boire recognised that like an act of terrorism, the State's use of violence used within the process of punishment aims to instil fear in a target in order to modify its behaviour separate to the immediate victim:

"As with punishment, the actual harm of the punitive act must be publicised among the primary target audience and be credible enough to impress deterrent fear into their minds. And, as deterrence theory would predict, the actual harm done is vastly disproportionate to the psychological effect achieved and the resultant behaviour modification in the primary target"⁷¹⁸.

⁷¹⁵ Walter E.V. *Terror and Resistance: A Study in Political Violence*. (Oxford University Press. Oxford. 1969.). p22.

⁷¹⁶ Gibbs J.P. 'Conceptualization of Terrorism'. *American Sociological Review*. Vol. 54. 1989. pp329-340. p332. According to Morris every criminal law system in the world, except Greenland has deterrence as its primary and essential postulate. Morris N. 'Impediments to Penal Reform'. *The University of Chicago Law Review*. 1966. Summer. 33 (4).pp 627-656. p631.

⁷¹⁷ Sir Arthur Goodhart cited in Morris N. 'Impediments to Penal Reform'. *The University of Chicago Law Review*. 1966. Summer. 33 (4).pp 627-656.p631. Morris p631. Yet because this utilitarian case for punishment justifies it primarily on the grounds of deterring the actual implementation of the violence is not necessarily required but like any of the most successful uses of terrorism, the technique intends to work by threat. Wilkins claimed that there are two principal rationales for punishment in any criminal justice system, retribution and deterrence. Of which he argues moral philosophers for the most part seem to be happier with the latter. Wilkins B T. *Terrorism and Collective Responsibility*. (Routledge. London. 1992.).p140. Although as one author noted the two cannot be totally divorced for the implementation of a deterrence involves an act of retribution.

⁷¹⁸ Boire M.C 'Terrorism Reconsidered as Punishment: Toward an Evaluation of the Acceptability of Terrorism as a Method of Societal Change and Maintenance'. *Stanford Journal of International Law*. Vol. 20(1). 1984. pp43-143. p97. This is in line with Aron's often cited statement that the psychological effects of terrorism are disproportionate to the physical ones. A view echoed by Andenaes who noted that in continental theories of criminal law, a basic distinction is made between the effects of punishment on the man being punished. What he terms the 'individual prevention' or 'special prevention' and the effect of punishment upon the members of a society in general or 'general prevention'. Thus by both means of criminal law and by means of specific application of the law "messages" are sent to members of a society. Andenaes

Yet whilst acknowledging that such a double standard is inherent in this author's conception of the State, it should be pointed out that this is not the (extra) ideologically motivated double standard of those who would differentiate between the legitimacy of acts of violence on the basis of the (just) political cause of the particular state (or claimant to its authority) or the nature of its politics. Nor does this double standard mean that the State cannot commit acts of terrorism, be it at home or abroad. It is to the latter that this thesis turns for it is the easiest place to understand that the State can commit acts of terrorism.

Terrorism and The State's Use of Violence Abroad.

After accepting this particular concept of the State, it is easy to see how the State can be potentially considered as terrorist in regards to the actions it undertakes *outside* of its area of effective jurisdiction i.e. abroad. That is, it is because the thesis takes the view that the individual state has as much or as little right to carry out acts of violence in the international system of states as a sub-state group has anywhere that the violence of the State can be seen to be possessing the equivalent amount of (il)legitimacy as a non-state actor. The view that the State can commit acts of terrorism outside its area of effective jurisdiction is a popular one, for example in response to this author's question "Can acts or threats of violence carried out directly by agents of one power outside its area of domestic jurisdiction ever be labelled 'terror/ism'?" 95% of the respondents indicated "Yes" ⁷¹⁹.

Yet the fact that the vast majority of respondents came to the same conclusion as the author does not necessarily mean that they reached it by using the same reasoning as either this author, or each other. Usefully one of the respondents to the questionnaire noted the two main alternatives to this author's approach in replying to the previous question noted above. After indicating that acts or threats of violence carried out directly by agents of one power outside its area of domestic jurisdiction could be labelled 'terror/ism, Eubank added: "[t]he acts may be illegal in other jurisdictions or considered to be a violation of either international law, such as it is, or moral/ethic norms elsewhere"⁷²⁰. Other respondents also claimed that the legitimacy of a State's actions abroad can be judged *vis-a-vis* actually existing international law⁷²¹,

⁷¹⁹ To question 11, 108 indicated that 'acts or threats of violence carried out directly by agents of one power outside its area of domestic jurisdiction' could 'be labelled 'terror/ism' 6 indicated that they could not. Six failed to answer.

⁷²⁰ W. L. Eubank referred to his answer to question 9, which read, "[t]he acts may be illegal in other jurisdictions or considered to be a violation of either international law, such as it is, or moral/ethic norms elsewhere".

⁷²¹ In answer to this question P. Buchanan answered, "Any act, as defined earlier, carried out without the formal engagement of hostilities and outside international standards for the conduct of war". H. Tittmar similarly indicated that acts or threats of violence carried out directly by agents of one power outside its area of domestic jurisdiction could be labelled 'terror/ism and added "When going beyond their U.N. remit" and "when breaking the Geneva Conventions". A.P. Rubin referred to his answer

but if this path is chosen, it leads to the numerous problems resulting from the lack of consensus regarding the legality of the State's right to use force abroad mentioned previously in the chapter on a legalistic approach. Notably the questions of 'What is the correct interpretation of self-defence within the U.N. Charter?', What constitutes an armed attack against which one can defend oneself?, as well as questions of timing and proportionality of the response.

However when viewed from the position that the State has as much or as little right to use force abroad as the sub-state actor does where ever it is, it is easy to see how various acts of coercive diplomacy, including both the active (one-sided) and passive (retaliatory) threats of counter-value strikes by states -including those using indiscriminate weapons of mass destruction- meet the denominative criteria as Stohl had claimed⁷²², albeit using a different definition to him. The use or threat of violence comes from an organisation and the violence is used to achieve political ends. It aims to affect the behaviour of an audience (or primary target) -the enemy's government- by threatening an innocent or illegitimate target, the civilian population living in major towns and cities. Even if the aim is to produce a decision not to act in a particular way, its aim is to modify the behaviour of government leaders and to dissuade them from engaging in particular acts. Unfortunately however not all authors see the situation this way. Schmid for example refused to label nuclear deterrents as "atomic terror" due to his belief that the historical record of the first forty years of the superpowers nuclear diplomacy did not provide any substantial evidence of blackmail and extortion comparable to what is produced by a terrorist organisation⁷²³, coupled with his view that:

"[d]eterrence implies that one wishes to prevent the other side from doing something. As long as the other-side is doing nothing nobody is directly threatened. In an embassy siege however a third party (not the hostages) is

to question 9, the most relevant part read "Domestic law is not relevant to the international law questions".

⁷²² Stohl M. 'International Dimensions of State Terrorism' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Connecticut. 1984.).pp43-58. p43-44 and 48-50.

⁷²³ Schmid A.P. and Jongman A.J. *Political Terrorism: A new guide to actions, authors, concepts and databases*. (SWIDOC. Amsterdam. 1988.). p12.

compelled to do something to assure the survival of the hostages. Doing nothing is not enough"⁷²⁴.

Similarly Wilkins claimed that:

"[t]he bombing of Hiroshima and Nagasaki, while obviously intended by the American government to alter the policies of the Japanese government seemed for all the terror they involved more an act of war than of terrorism"⁷²⁵.

Although he then 'pulled the rug from under his own feet ' by saying: "which is not to say that the state of being at war precludes terrorist activities directed against the enemy"⁷²⁶. If he had kept to his original comment he could have been supported by authors such as Wilkinson, Thornton and Noel O'Sullivan⁷²⁷, all of whom deliberately excluded the acts of terrorism which often accompany war from their works. The latter author justified this omission by claiming that the concept of terrorism is only intelligible in reasonably settled and stable contexts, within which it is possible to contrast the illegal practises of the terrorist with the constitutional procedures prescribed for established state representatives⁷²⁸. However despite the attempts at excluding it from the definition nuclear deterrence -like all such indiscriminate deterrents be they chemical, biological or conventional- is according to

⁷²⁴ Schmid A.P. and Jongman A.J. *Political Terrorism: A new guide to actions, authors, concepts and databases*. (SWIDOC. Amsterdam. 1988.). p13.

⁷²⁵ Wilkins B. T. *Terrorism and Collective Responsibility*. (Routledge. London. 1992.). p17.

⁷²⁶ Wilkins B. T. *Terrorism and Collective Responsibility*. (Routledge. London. 1992.). p17.

⁷²⁷ Wilkinson P. 'Some Observations on the Relationships between Terrorism and Freedom' in Warner M. and Crisp R. (eds.) *Terrorism, Power and Protest*. (Edward Elgar. Aldershot. 1990.). pp44-53. p44. Thornton wrote, "we shall thereby exclude manifestations of terror in international war (like strategic bombing)". Thornton T.P. 'Terror as a Weapon of Political Agitation' in Eckstein H. (ed). *Internal War Problems and Approaches*. (The Free Press of Glencoe, Collier Macmillan. London. 1964.). pp71-100.p71. O'Sullivan N. wrote that "excluded [from his definition of political terrorism] is the terrorism [sic] which in various forms accompanies war since the concept of terrorism is only intelligible in reasonably settled and stable social contexts within which it is possible to contrast the illegal practices of the terrorist, with the constitutional procedures prescribed for the established state representatives". O'Sullivan N. 'Terrorism, Ideology and Democracy' in O'Sullivan N. (ed.). *Terrorism, Ideology and Revolution*. (Wheatsheaf Book. Brighton. 1986.).pp3-26. p4.

⁷²⁸ O'Sullivan N. 'Terrorism, Ideology and Democracy' in O'Sullivan N. (ed.). *Terrorism, Ideology and Revolution*. (Wheatsheaf Book. Brighton. 1986.). pp3-26. p4.

this author's definition, a form of direct (if mutual and passive) state terrorism⁷²⁹.

It would be wrong to claim, however, that all nuclear strategies constitute terrorist threats, for excluded are those that involve highly accurate, low-yield warheads which are (to be) used merely for destroying the enemy's counter-force capability within a war-fighting doctrine. As acts of violence targeted against legitimate targets these actions would constitute what this author term 'acts of war' in the previous chapter. In this way both Schelling, who asked whether any organisation that acquired such weapons can be anything but terrorist in the use of such weapons⁷³⁰, and Perdue who suggested that the preparation and planning for mass destruction in the nuclear age should perhaps be redefined as the ultimate form of terrorism⁷³¹ can be seen to have gone too far in their claims.

⁷²⁹ Sproat P.A. 'Can The State Be Terrorist?' *Terrorism: An International Journal*. Vol. 14.(1). Jan-Mar 1991. pp19-29.p24. Stohl cites Schelling T.C. 'Thinking About Nuclear Terrorism'. *International Affairs*. Vol. 6.(4). Spring 1982. pp61-77.p66. Stohl M. 'International Dimensions of State Terrorism' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Connecticut. 1984.).pp43-58. p49.

⁷³⁰ Schelling T.C. 'Thinking About Nuclear Terrorism'. *International Affairs*. Vol. 6.(4). Spring 1982. pp61-77. p66.

⁷³¹ Perdue W. *Terrorism and the State: A Critique of Domination Through Fear* (Praeger. New York. 1989.). p19-20.

Terrorism and the State's Use of Violence Within its Area of Jurisdiction.

After accepting that the State can be judged to have committed acts of terrorism in relation to its activities outside its area of jurisdiction using the same formula for labelling the non-state actor, the immediate questions to be answered becomes 'Can the State commit acts of terrorism within its area of domestic jurisdiction?'. Can one, as Duvall and Stohl claimed (but did not substantiate)⁷³², define the State in Weberian terms of physical violence without having to relinquish the ability to label the State as terrorism? (and if so, how?). The answer to the first two of these three questions is 'Yes', and again Gilbert aids an understanding of the production of such answers. This time by claiming that we are concerned here, not with the general questions about the moral foundations of government activity or the moral justification of violence opposition to it, but with a moral comparison between the actions of a state and the actions of an insurgent⁷³³. He also suggested that further light could be thrown on to this question by asking what moral difference is there between on the one hand, its ordinary activities of law enforcement and the maintenance of internal security and, on the other, those extraordinary activities that go by the name of state terrorism?⁷³⁴.

As noted in an earlier part of this chapter, the State is identified as an entity which has a defined territory. Its territory is defined as the geographical area within which it exercises sovereignty, and this is in itself determined by effective control maintained with the intention of permanency. Over this area the State has exclusive jurisdiction and can prescribe (and proscribe), adjudicate and enforce its laws⁷³⁵. Once this judicial system has been identified the State can be said to exist. It is this latter aspect of the State that is crucial to an understanding of this

⁷³² Duvall R.D. and Stohl M. 'Governance by Terror' in Stohl M. (ed.) *The Politics of Terrorism*. (3rd ed. Marcel Dekker. New York. 1988.). pp231-272. p232-233.

⁷³³ Gilbert P. *Terrorism, Security and Nationality: An Introductory Study in Applied Political Philosophy*. (Routledge. London. 1994.). p128.

⁷³⁴ Gilbert P. *Terrorism, Security and Nationality: An Introductory Study in Applied Political Philosophy*. (Routledge. London. 1994.). p128.

⁷³⁵ Joynt C.B. and P.E. Corbett P.E. *Theory and Reality in World Politics*. (Macmillan Press. London. 1978.). p107.

author's labelling of the State's use of force at home as terrorist, for as already noted what is required for a notion of an act of state is, of course the idea of a constitution within which such acts are performed⁷³⁶. This author's definition is therefore concerned with the nature of the regime's acts in relation to the legal-constitutional laws it enforces, rather with nature of the regime's legal claim to power⁷³⁷. In this way the author's concept of terrorism not only allows for any group to become the State -once it has established a legal system- but it can avoid the problems associated with the rule of a tyrant noted by David George:

"[c]onstitutional government takes many forms, but in each the cardinal feature is the rule of law and it is this which makes it the direct opposite of tyranny. Strictly, tyranny is an exercise of a claim to subject people to the absolute and arbitrary power of the claimant; to do with him as he pleases without restriction...all rights are rejected"⁷³⁸.

The identification of an 'act of state' in accordance with a legal system and constitution makes it easy to see how the political analyst can subsequently label those domestic acts of political violence committed by agents of the State *outside* of a constitutional-legal framework, be it physically i.e abroad, or legally, that is extra-judicial, as 'illegitimate' and therefore potentially 'terrorist' (subject to satisfying other qualifying criteria). This is because by acting beyond the powers ascribed to it (*ultra vires*) the State can be described as acting 'illegally' and therefore such actions can be treated as being on a par with those of a sub-state actor.

⁷³⁶ Gilbert P. 'Political Suppression and the Violence of the State'. Paper presented at E.C.P.R. Workshops. Essex. 1991. p15.

⁷³⁷ Certain authors appear to label particular types of states constitute terrorist states. In reply to question 9 which asked "Can legal acts of violence carried out by those in power within the area of domestic jurisdiction ever be labelled as 'terror/ism'?" R.S. Ezekiel answered, "[m]ost acts of authoritarian states to control their populations include an element of violence that can be considered state terror"; A. Geifman indicated yes and added "when the government perpetuating these acts is totalitarian"; likewise F. Homer answered yes and added "by authoritarian regimes", whilst an anonymous respondent wrote "When the 'legal' acts are actions of a tyrannical government. For example, Stalin's vast gulags were 'legal' under Soviet 'law'".

⁷³⁸ George D. 'Terrorism or Freedom Fighter' in Warner M. and Crisp R. (eds.) *Terrorism, Power and Protest*. (Edward Elgar. Aldershot. 1990.).pp54-67.p64. Similarly Gilbert wrote "an act cannot be an act of state simply by conforming to the will of a dictator for there would be no difference between an act of state and his private act". Gilbert P. 'Political Suppression and the Violence of the State'. Paper presented at E.C.P.R. Workshops. Essex. 1991. p15.

This view that those acts of violence perpetrated within its area of domestic jurisdiction which are 'illegal' in relation to the State's own laws, may qualify for the label of state terrorism poses few problems except for legal writers who don't accept that such acts constitute 'acts of state'⁷³⁹. The holding of the view that illegal acts of a state can be labelled as terrorist is far from unique, for in reply to this author's question, "Can illegal acts of violence carried out by those in power within the area of domestic jurisdiction ever be labelled 'terror/ism'", a surprisingly high 97% of the respondents answered 'Yes' ⁷⁴⁰. Although again this is not to say that all of them used the logic of this author. Sandra Woy-Hazelton for example went as far as to suggest that: "all illegal acts of violence are terrorism"⁷⁴¹, whilst many of these authors conceived legality in terms of international law, just as they had in reply to other questions noted earlier⁷⁴², Tittmar for example said that the label could be applied to the State: "when breaking U.N. resolutions"⁷⁴³.

The main conceptual difficulty in producing a definition of state terrorism is in relation to those *legal* acts of violence perpetrated by the State within its area of domestic jurisdiction. Can the legal acts of the State constitute acts of terrorism when they are committed within the State's effective area of jurisdiction?. It is easy to understand how a state's legal use of politically motivated violence in order to punish and deter others from breaking its laws *cannot* (generally speaking)

⁷³⁹ Skubiszewski for example said that in "terms of law, in contrast to the language of politics and diplomacy, the State cannot perpetrate the crime of terrorism". Skubiszewski K. 'Definition of Terrorism'. *Israel Yearbook on Human Rights*. Vol. 19. 1987. pp39-54. p48. Whilst Gilbert wrote that it is only in an extended sense that acts of state terrorism are acts of state at all. A criminal act by an agent of the State is, normally, only the private act of an individual. Gilbert P. *Terrorism, Security and Nationality: An Introductory Study in Applied Political Philosophy*. (Routledge. London.1994.). p134.

⁷⁴⁰ To question 10, 111 indicated that 'illegal acts of violence carried out by those in power within the area of domestic jurisdiction' can never 'be labelled 'terror/ism' . Three indicated that they could not, and 6 failed to answer.

⁷⁴¹ See reply to question 10.

⁷⁴² In answer to question 11, P. Buchanan answered "Any act, as defined earlier, carried out without the formal engagement of hostilities and outside international standards for the conduct of war" and in answer to question 9, A.P. Rubin wrote "Domestic law is not relevant to the international law questions".

⁷⁴³ H. Tittmar in reply to question 10,

constitute acts of terrorism if legitimacy is ascribed to (at least some) actions of the state *apriori*.

The original element of this author's concept of state terrorism is therefore not that it allows legal acts of political violence to qualify as acts of state terrorism. This is also true of those authors who refer such actions against some higher legal authority such as the United Nations Charter, the Universal Declaration of Human Rights or some other piece of international law which has prohibited the use of particular violent acts⁷⁴⁴. Indeed in answer to this authors question "Can legal acts of violence carried out by those in power within the area of domestic jurisdiction ever be labelled as 'terror/ism'?" a surprisingly high 84% answered "Yes" ⁷⁴⁵. Again not all answered in the affirmative because they referred to international law. Weifelder, for example, indicated that acts performed in accordance with the domestic laws of the state could be considered as acts of terrorism "When the rule of law and independence of the judiciary is non-existent"; whilst Adam Roberts wrote "They can be so labelled in cases where the legal framework allows (or turns a blind eye to) such acts as intimidation by police, arbitrary arrest and even torture"⁷⁴⁶.

The originality of this authors definition of terrorism is in the way in which this answer is produced. Here legitimacy is ascribed only to those threats or acts of state violence (i.e. punishment) used to maintain its laws which allowed the guilty to have had a chance to alter their behaviour. This distinction in targeting made within the State's area of jurisdiction approximates to the *jus in bello* principle of discrimination between, rather than simply between the State's legal and illegal activities. Generally speaking ,acceptable acts of punishment are aimed only at those genuinely suspected of being malefactors (guilty or non-

⁷⁴⁴ For example Bowen wrote "When the definition of legal acts contravenes broadly recognized international standards of human rights, then and only then are legal acts also state terrorism"; Yaeger wrote "If a nation's legal system or constitution, allows acts which violate the United Nations Declaration of [presumably Human] Rights, then I believe that international legality and morality eclipses "legal system" in a sovereign state which allows such violation" and Jeffrey who wrote that "Where the legal system does not generally protect human rights".

⁷⁴⁵ Eighty eight respondents to question 9, indicated that 'legal acts of violence carried out by those in power within the[ir] area of domestic jurisdiction' can 'be labelled as 'terror/ism' , 17 indicated that they could not. Fifteen failed to reply to this question.

⁷⁴⁶ R.F. Weisfelder and A.Roberts reply to question 9.

innocent) rather than at innocent, therefore only would be malefactors are the intended objects of any terror produced by the laws threat of punitive violence. However the would-be victims can avoid the expected harms by simply refraining from doing the punishable acts, just as the soldier can surrender. The victim of terrorism does not have that recourse.⁷⁴⁷ As Walter noted, in the terror process, no one can be sure, for the category of transgression is, in reality, abolished. Anyone may be a victim, no matter what actions he or she chooses⁷⁴⁸. However the conditions of legality must imply that there must be a way of being innocent, because if there is no path left open to avoid transgression or if people are bound to be charged falsely with offences they did not commit, then it is not possible to be innocent⁷⁴⁹. This distinction is analogous with that made within the *jus in bello* war convention, for, according to Walzer, what lies behind this part of the just war tradition and makes it plausible:

"is the moral difference between aiming at a particular people because of things they have done or are doing and aiming at a whole group of people indiscriminately because of who they are"⁷⁵⁰.

⁷⁴⁷ Narveson J. 'Terrorism and Morality' in Frey R.G. and Morris C.W. (eds). *Violence, Terrorism and Justice*. (Cambridge University Press. Cambridge. 1991.).pp116-169. p118.

⁷⁴⁸ Walter E.V. *Terror and Resistance: A Study in Political Violence*. (Oxford University Press. Oxford. 1969.). p26.

⁷⁴⁹ Walter E.V. *Terror and Resistance: A Study in Political Violence*. (Oxford University Press. Oxford. 1969.). p26. Also Hill T.E. Jnr. 'Making exceptions without abandoning the principle: or how a Kantian might think about terrorism' in Frey R.G. and Morris C.W. (eds). *Violence, Terrorism and Justice*. (Cambridge University Press. Cambridge. 1991.) pp196-229. p209-210. Galtung succinctly summed up many of the necessary conditions for the State's legal acts to avoid the label terrorism in one paragraph. After noting that "The individual *whom* should not be predictable" he went on to say that "Under the rule of law the state administers evil in the form of something destructive....But there should be a high element of predictability. The *where* and the *when* and *how* punishment is carried out is prescribed in the law: the *why* is defined by the illegal act, the *whom* is in principle knowledgeable to the individual(s) transgressing the fine line of law in *advance*. *The rule of law is predictable ; the rule of terror unpredictable*". Galtung J. 'On the Causes of Terrorism and their Removal' in Kochler H. (ed.). *Terrorism and National Liberation*. (International Progress Organisation. Peter Lang. Frankfurt. 1988.). pp51-66. p52.

⁷⁵⁰ Walzer M. *Just and Unjust War*. (Allen Lane. London. 1978.). p200. Rapoport wrote about the French Revolution thus, "[e]nemies of the People were considered dangerous to the revolution not simply because of what they did but more fundamentally because of who they were and what they might do". Rapoport D.C. 'Introduction to Part II' in Rapoport D.C. and Alexander Y. *The Morality of Terrorism: Religious and Secular Justifications*. (Pergamon Press. London. 1982.).pp127-132. p128.

Within this author's conception of state terrorism legitimacy is ascribed *apriori* only to *some* of the actions of the State, and yet whilst this author's definition of state terrorism may be original as a result of this, the method by which the legitimacy is given (or denied) is not. Interestingly this author's method of ascribing illegitimacy to legal acts of state, is in accord with the existing 'principle of legality' found within jurisprudence and held by lawyers who advocate a 'procedural justice' approach to the rule of law, and it is to this that the thesis now turns.⁷⁵¹.

Legality.

According to Mathews, the fundamental notion that underlies the concept of 'legality' is that of government under law rather than merely by law. In this sense and in contrast to a pure 'law enforcement approach' of dry 'legalism', which would imply that all legal acts are legitimate, the notion of 'legality' contains a procedural aspect in its approach to justice. As a result the notion of 'legality' demands that (in order to be considered legitimate) laws have to be formulated so that they will constitute a clear guide to human conduct. It is of no surprise then that the leading proponents of this approach demand amongst other things, that legal government promulgates (clearly worded) rules; prohibits retroactive laws; avoids rules that demands the impossible ⁷⁵². According to Mathews, vaguely worded laws mean that: "[t]he conduct made punishable is too loosely described to enable the citizen to determine what the law commands or forbids" ⁷⁵³; laws which are not prospective cannot serve as a guide to human conduct and therefore retroactive penal laws are irreconcilable with the legality

⁷⁵¹ Mathews A.S. *Freedom State Security and the Rule of Law*. (Juta and Co. Cape Town.1986.). p3. Mathews goes on to say that the notion of legality is without doubt "an important, rich and fruitful concept which no satisfactory theory of the rule of law can dispense with". p9.

⁷⁵² Fuller who is seen as the leading light of this school claims that there are eight 'imperatives' of legal government. The three noted here are in accordance with numbers 2 (and 4) ; 3;6 of the eight. Fuller L.L. *The Morality of Law*. (Yale University Press 1964) p39, 46-94 as cited by Mathews A.S. *Freedom State Security and the Rule of Law*. (Juta and Co. Cape Town.1986.). p6.

⁷⁵³ Mathews A.S. *Freedom State Security and the Rule of Law*. (Juta and Co. Cape Town.1986.). p3-4.

principle; and the requirement that laws be 'open' restates the proposition (originally made by Fuller) that the laws should be promulgated and accessible to the citizens.⁷⁵⁴

However whilst this procedural justice approach demands specific requirements concerning the form and manner of administration of the laws it avoids prescribing content of laws. The result of which is that these requirements of legality are equally applicable to autocratic states as they are to democracies⁷⁵⁵.

⁷⁵⁴ Mathews A.S. *Freedom State Security and the Rule of Law*. (Juta and Co. Cape Town.1986.). p6.

⁷⁵⁵ Hall J. *General Principles of Criminal Law* (2 ed. Bobbs-Merrill Co. Indiannapolis 1947.). p68. cited by Mathews A.S. *Freedom State Security and the Rule of Law*. (Juta and Co. Cape Town.1986.). p9.

A Comprehensive Definition of Terrorism.

These requirements provide a certain amount of precision that differentiates the state terrorism part of this definition from previous definitions of state terrorism. So at the end of the sieving process, one is left with a definition that is much qualified in terms of motive (political rather than private), intention (to instil fear rather than merely to destroy), targeting (of 'innocents') *and* status (that allows certain legal violent activities of the state at home, which, if committed abroad, would qualify as terrorism to exist as legitimate punishment), while enabling particular arbitrary and/or indiscriminate actions to be labelled as domestic 'state terrorism'. Thus, for the political analyst terrorism should be identified as:

"the threat or use of violence for political purposes by either non-state organisations anywhere, or the State outside its area of jurisdiction, when such actions are intended to modify the behaviour of target(s) wider than the immediate innocent victim(s); or the use of such purposive violence by the State (when it claims the authority over the immediate victim) when its actions are either illegal (according to its own legislation), or legal but fail to allow the individual victim the opportunity to avoid such purposive violence for example through the retrospective, secret, vague or indiscriminate nature of its enabling legislation, or legislation which does not allow the victim the opportunity to prove their innocence in a court of law".

The notion of "when it claims the authority over the immediate victim" is necessary to get around the problem of the State's otherwise illegal treatment of enemy combatants on its soil to whom the normal police rules of engagement are not applied despite their existence. The advantage of this is that it allows the State to choose to treat a political organisation differently to the privately motivated individual. In this way the thesis gets around the problem noted by Gilbert: "[i]f an act of state terrorism were morally permissible as an act of war the State should acknowledge it as war"⁷⁵⁶. Gilbert presumably could not take this author's position because he took an international law

⁷⁵⁶ Gilbert P. *Terrorism, Security and Nationality: An Introductory Study in Applied Political Philosophy*. (Routledge. London. 1994.). p132.

approach⁷⁵⁷, and as he himself said, the status of prisoners of war is not applicable to a state's own citizens under the doctrine of international law⁷⁵⁸.

Examples of legislation which prevent the individual from avoiding the State's acts of violence have been evident in the so called 'classical' examples of reigns of terror or terrorist state, although the existence of such legislation may not have been the (sole) reason for the accusations of state terrorism levelled against them.

Secret legislation for example was widespread in the former U.S.S.R. in the form of the "literally millions" of unpublished enactments at all levels of the state apparatus during the period known as the Stalinist Terror⁷⁵⁹. Whilst it has also been noted that the Nazi's used secret laws "to effectuate the most barbarous aspects" of its genocide programme⁷⁶⁰.

Indiscriminate 'catch all' or 'blanket' pieces of legislation for example were often used in the periods of military rule in South America in the 1970's and 1980's. As Pion Berlin noted, "[s]pecific charges were rarely brought" against the disappeared and abducted. Instead the authorities accused them broadly of conducting subversive or terrorist activities. In Brazil those who allegedly committed subversive acts were seeking the "transformation of the existing order"⁷⁶¹. Whilst in Argentina the justification for such counter-terrorism was even less precise, as

⁷⁵⁷ Gilbert wrote, "[t]errorism which is legalised by the State involves making exceptions to laws which protect citizens in times of peace from being killed, wounded or imprisoned without the application of recognised legal processes. Acts of legalised terrorism thus constitute a grave infringement of human rights. In such cases it may be argued that, although legislation has been carried through which is technically in order, the fact that it breaches human rights invalidates it under international law - *lex invicta non est lex*' ". Gilbert P. *Terrorism, Security and Nationality: An Introductory Study in Applied Political Philosophy*. (Routledge. London. 1994.). p133.

⁷⁵⁸ Gilbert P. *Terrorism, Security and Nationality: An Introductory Study in Applied Political Philosophy*. (Routledge. London. 1994.). p169.

⁷⁵⁹ Butler W.E. 'The Rule of Law and the Legal System' in White S., Pravda A. and Gitelman Z. (eds). *Developments in Soviet Politics*. (Macmillan. Basingstoke. 1990.). p105.

⁷⁶⁰ Richard D.A.J. 'Terror and the Law'. *Human Rights Quarterly*. Vol. 5 (2). 1983. pp171-190. p180.

⁷⁶¹ Pion-Berlin cites Dassoli (ed). *Torture in Brazil* (Vintage Books. 1986). p132. Pion-Berlin D. *The Ideology of State Terror: Economic Doctrine and Political Repression in Argentina and Peru*. (Lynne Rienner. Boulder. 1989.). p4.

military President General Jorge Videla labelled as subversive "anyone who opposes the Argentine way of life". A specific example of such legislation is that of the Institutional Act of June 18, 1976, by which the Argentine military junta assumed:

"the power and responsibility to consider the actions of those individuals who have injured the national interest", on grounds as vague and ill-defined as failure to observe basic moral principles in the exercise of public, political or union offices or activities that involve the public interest"⁷⁶²

Similarly legislation which produced other unavoidable accusations would be considered illegitimate. This includes not only retrospective legislation which interestingly many of the human rights conventions outlaw⁷⁶³, but also any that create a crime of 'suspicion' of a particular offence for this surely a self-fulfilling prophecy. An example of the latter is the Soviet decree that made it an offence to be *suspected* of sabotage⁷⁶⁴.

Ascriptive legislation which made it an offence to be something which one could not change rather than to do something, for example, being a particular colour, sex, or coming from a particular family has also been widespread. The most obvious example was its use against the Jews in Nazi Germany⁷⁶⁵ and against various races in *apartheid* South Africa.

⁷⁶² Corradi J. E. 'The Mode of Destruction: Terror in Argentina' *Telos* (Special Issue on Terrorism and State Terrorism). No54. Winter 1982-83. pp61-76. p70-71. He goes on to say "[I]awlessness became paradoxically an official routine".

⁷⁶³ Article 8(1), and 8(2) of the I.C.C.P.R. declare that no one shall be held in slavery or servitude respectively.

⁷⁶⁴ Unfortunately Maier does not name it. Maier C. *The Unanswerable Past: History, Holocaust and German National Identity*. (Harvard University Press. London. 1988.). p79.

⁷⁶⁵ Richard wrote "the hallmark of the Nazi terror was precisely its war on this ideal [of personal autonomy by which persons are subject to legal sanctions only for conduct culpably undertaken with some fair warning of the consequences]. The appropriateness of punishment would turn merely on the fact that the person was a Jew, or a gypsy, or subject to a health disability, or homosexual". Richard D.A.J. 'Terror and the Law'. *Human Rights Quarterly*. Vol. 5 (2). 1983. pp171-190. p181. This author would exclude the last of his examples on the grounds that one has a choice whether or not to carry out any sexual act. Likewise it is possible to introduce legislation that discriminated against Jews (or any other religious group for that matter) which is not ascriptive in that it allowed existing believers to modify their behaviour and to stop carrying out practices that were associated with being of that faith. However as Gregor noted in Nazi Germany there "was no voluntary behaviour any Jew might have undertaken that would have insured him or her against the threat of deadly force". He goes on to say "[i]f there had been something that they might have done to comply with the wishes of the

Whilst in Stalin's Soviet Union Article 58 of the Criminal Code provided the death penalty for flight abroad which is not problematic in itself, however if military personnel took such actions, members of their family who were aware of the intended offence were subject to ten years imprisonment, whilst: "the remaining adult members of the traitor's family and those living with him or dependent on him at the same time were made liable to five years exile"⁷⁶⁶.

However it should be remembered that such legal but illegitimate acts do not necessarily constitute state terrorism, for only when there is the intention of making the immediate victim serve as a symbol that is to be an instrumental victim in a process of communication with the real target audience of the State's message can such activities be classified so. This author's definition of state terrorism would therefore not have covered the use of the death penalty against those in apartheid South Africa for writing of letters to Africans likely to encourage feelings of hostility between the whites and other inhabitants. An activity which was criminalised by *apartheid* South Africa's law on terrorism⁷⁶⁷.

Nor would it label most acts of genocide as state terrorism, for despite the fact that political violence is used against an innocent victim, there is no target audience whose behaviour the State aims to modify *via* this use of violence. Although the legal genocide of one particular ethnic group for the purpose of intimidating another ethnic group that shares with the former a difference from another ethnic group (the perpetrators themselves), would qualify as an act of state terrorism for here is a target audience whose behaviour the State aims to modify as well as legal violence which did not allow the victim of its violence the opportunity to change their behaviour and avoid the violence.

national security then the word violence used against them would have qualified as just that- violent repression or intimidation- but it would not have been terror". Gregor A.J. 'Some Thoughts on State and Rebel Terror' in Rapoport D.C. and Alexander Y. *The Rationalization of Terrorism*. (University Publications of America. Frederick MD. 1982). pp56-79. p71.

⁷⁶⁶ Article 58 of the Soviet Criminal Code 9th June 1934. Conquest R. *The Great Terror: A Reassessment*. (Pimlico. London.1992.). p75.

⁷⁶⁷ Kittrie claims this citing Section 2 of the Terrorism Act No.83 of 1967 as cited by Rubin L. 'Apartheid in Practice' UN Public OPI/553 (1976) p40. Kittrie N.N. 'A New Look at Political Offences' in Livingstone M.H. (ed) *International Terrorism, in the Contemporary World*. (Greenwood Press. Westport, Connecticut. 1978.). pp.354-376. p366.

However this author's definition would allow the State to legally repress many peaceful actions such as political demonstrations, religious ceremonies, or publications without such threats or uses of violence being labelled state terrorism as long as the prohibition was made clear in advance so that the individual could choose to avoid doing these activities in public. This author's definition would also enable the state, if it so desired, to execute the members of political parties or religious organisations and the practitioners of particular sexual practices (appalling as this would be) without its being called state terrorism, as long as this prohibition was made clear in advance so that existing members could modify their behaviour and leave. This refusal to label politicide or this type of religious genocide or the genocide of practicing homosexuals would be in line with (Walzer's ⁷⁶⁸) criteria of aiming at a particular people because of things they have done or are doing rather than aiming at a whole group of people indiscriminately because of who they are.

To recap for a state's legal threat or use of violence to qualify as legitimate, the immediate victim must have the opportunity to gain knowledge of the law in order to modify his behaviour in relation to previously publicised legislation- however trivial its prohibition. Without this qualification based on having the chance to gain knowledge of the legislation, the unwary lawbreaker, who is subsequently incapacitated or even exterminated by the state's legal violence, would not have been punished for breaking the law in the true sense of the word. Instead they like the victims of insurgency terrorism, would have would have been (from his perspective) arbitrarily or randomly victimised merely for being, rather than doing something that he could have chosen to avoid. As such the individual victim can be classified as an 'innocent' victim of this legal but illegitimate punishment and possible act of domestic state terrorism. This view contrasts with those who define state terrorism as the State's prohibition of particular human rights, or international law generally. This author's *de facto* definition allows the State to maintain unlimited authority and jurisdiction over all areas of life, that is to aim for total(itarian) control within its area of domestic sovereignty if it so chose.

⁷⁶⁸ Walzer M. *Just and Unjust War*. (Allen Lane. London. 1978.).p.200.

However before going on to apply this definition to the counter-terrorist actions of Israel, it is useful to remember that there are of course a number of potential alternatives to that proposed by this author, indeed the number of alternative definitions of terrorism using just the 22 noted by Schmid is over 4 million! However of more practical value is the identification of the major approaches to the concept of state terrorism, all which were summarised by Gurr when he wrote:

"State terror should be judged not in the absolute but against some standard. Normatively, the standard might be that of international law (which at present condemns genocide but not state terrorism), or the domestic laws of the state in question, or the laws of culturally similar states, or some not-yet-codified conception of global human rights"⁷⁶⁹.

As already noted this author rejects the approach of those who would identify state terrorism by reference to international law mainly because of vague nature and contradictions of much of it. However there is no doubt that international law especially that humanitarian law covering human rights and the laws of war does provide examples of things which should be covered by a definition of state terrorism, and it is this overlap that may gain this author's definition support from those legally trained. Given the result of this author's reading of the topic of terrorism noted within the introductory chapter, and the approach of many legal documents, it is not surprising that some authors take a piecemeal approach and merely list 'offences'. Teichman for example wrote:

"'State terrorism' is characterised by such activities as the kidnapping and assassination of political opponents of the government by the police or the secret service or the army; imprisonment without trial; torture; massacres of racial or religious minorities or of certain social classes; incarceration of citizens in concentration camp, and generally speaking government by fear"⁷⁷⁰.

⁷⁶⁹ Gurr T.R. 'The Political Origins of State Violence and Terror: A Theoretical Analysis' in Stohl M. and Lopez G.A. (eds.) *Government Violence and Repression: An Agenda for Research*. (Greenwood Press. NY.1986.).pp45-72. p49.

⁷⁷⁰ Teichman J. 'How to Define Terrorism'. *Philosophy*. Vol. 64. 1989. pp505-517. p509-10.

Similarly Agyeman wrote that:

"terrorism is committed in today's world....when the aborigines of Australia are killed for sport, when Libya invades and at the point of a gun occupied the land of Chad; when the Turks slaughtered large numbers of human beings called Armenians; when the United States rains bombs on Libya, when South Africa massacres defenceless children and Soweto; when the USSR invades Afghanistan; when the CIA assassinates Patrice Lumumba, or when; through a maelstrom of violence, it overthrows the Allende government in Chile"⁷⁷¹.

This last example is interesting because Agyeman seems to be bordering on producing a rather politically motivated 'definition'. Others who have produced rather ideological definitions include those who equate state terrorism with a particular form of government. For example in reply to this author's questionnaire, Petras defined state terrorism as: "[t]he use of systematic violence to intimidate a population to accept the power of corporate and political elites"⁷⁷², whilst others have equated it with totalitarianism⁷⁷³.

This author's definition of state terrorism undoubtedly fits with Gurr's idea of judging it in relation to "the domestic laws of the state in question", although as noted earlier there can be a number of variations on the theme including taking a "dry legalism" approach which declares only illegal acts as illegitimate. Some are too narrow in that they concentrate solely upon illegal activities. For example in answer to this author's questionnaire Alexander George gave a definition of terrorism by those in power as the: "commission of (or

⁷⁷¹ Agyeman O. 'Terrorism: A Non Western View'. *Monthly Review*. Vol.39. (1). 1987. pp43-53. p52.

⁷⁷² J. Petras in answer to question 4.

⁷⁷³ In reply to both question 9 which asked "Can legal acts of violence carried out by those in power within the area of domestic jurisdiction ever be labelled as 'terror/ism'?" and question 10, "Can illegal acts of violence carried out by those in power within the area of domestic jurisdiction ever be labelled 'terror/ism'" A. Geifman answered yes and added "when the government perpetuating these acts is totalitarian". M. Anderson claimed that "[d]uring the post-war period state terrorism has been analysed as a function of the totalitarian state; the models have been, despite their own vast differences, Stalinism and Nazism. The images and theories of such state terror are owed principally, to Orwell and Arendt. And the central image of state terrorism indelibly linked with Stalinism and Nazism is the police state, implacable and all-knowing, total, as in the totalitarian state". Anderson K. 'Beginning to Theorise about Internal State Terrorism in the Third World'. *Terrorism and Political Violence*. Vol. 2 (1). 1990. pp106-111. p107.

threat to commit) acts of unlawful violence with a view to influencing the political behaviour of citizens (Approximately)" 774. Whilst Scarpaci defined it as:

"[i]llegal acts (defined by state/civil codes) unleashed upon the citizenry when the latter are usually denied due process of civil courts, thereby subject to military courts and military law."⁷⁷⁵

But at the same time this author's definition cannot escape the accusation of being culturally based as it applies various norms which underlie the use of state violence at both abroad and at home -that of principle of discrimination found within the just war tradition and the laws of war, and some of the principles found in the notion of legality. However this is not the same as those who say that terrorism exists where the culture disapproves of it. An example of the latter is the definition of "terrorism by public authority" suggested by Boire as:

"(1) It is an international act of violence or terror- inspiring activity, or the threat of such an act;

(2) by a power politically motivated actor.

(3) directed against an instrumental target comprised of persons or property

(4) which is intended to create in a larger primary target audience a psychological condition of fear, anxiety, terror and vulnerability greatly disproportionate to the physical result of the act of terrorism.

(5) for the purpose of modifying the primary target members behaviour or attitude and coercing them into supporting and/or effectuating the politically related objective desired by the terrorist actor and

(6) is beyond the ordinary legitimate coercion right of the terrorist actor as recognised by the actors political society"

Article 6 is particularly important to Boire's definition for it is the basis of distinguishing between legitimate and illegitimate types and degrees of force. Notably, this distinction has not been defined as being

⁷⁷⁴ A. George in answer to question 4.

⁷⁷⁵ J. Scarpaci in answer to question 4. Also C.A. Watson who wrote, "government orchestrated or tolerated (but knowingly) actions against its on citizens who received no legal protection or due process'.

determined by legality⁷⁷⁶, but in terms of the community's view of it. It is on these grounds that he excludes much insurgency violence which would otherwise fit his definition of terrorism.

The next part of the thesis attempts to apply this author's definition to a particular set of activities along with a number of other notable definitions, none of which belong to the school of international law, for this would make an application extremely difficult. However in order to illustrate this point the following description of Israeli counter-terrorist activities does make reference to relevant legal controversies.

⁷⁷⁶ Boire M.C 'Terrorism Reconsidered as Punishment: Toward an Evaluation of the Acceptability of Terrorism as a Method of Societal Change and Maintenance'. *Stanford Journal of International Law*. Vol.20(1). 1984. pp43-143. p55.

An Application of Various Definitions of State Terrorism.

"..the ideological battle over the nature of terrorism both embodies and alters relations of power with implications for the direction of societal change. To illustrate, deciding on what constitutes "real terrorism" may mean that authentic movements of national liberation will come to limit vendetta in their ranks and thereby gain global support at the level of the nation state. It is also possible that a Habermas-style "legitimation crisis" (1975) may result if and when forms of state violence are redefined as institutional terrorism. Stated simply, broad-scale rejection of that state violence masquerading as "counter-terrorism" may push states into new modes of conflict resolutions".

W. Perdue.⁷⁷⁷

"There are two ways to approach the study of terrorism. One may adopt a *literal approach*, taking the topic seriously, or a *propagandistic approach*, construing the concept of terrorism as a weapon to be exploited in the service of some system of power. In each case it is clear how they proceed. Pursuing the literal approach, we begin by defining what constitutes terrorism. We then seek instances of the phenomenon..."

N. Chomsky.⁷⁷⁸

⁷⁷⁷ Perdue W. *Terrorism and the State: A Critique of Domination Through Fear* (Praeger. New York. 1989). p8.

⁷⁷⁸ Chomsky N. 'International Terrorism: Image and Reality' in George A.(ed.) *Western State Terrorism*. (Polity Press. Oxford. 1991.). pp12-38. p12.

Counter-terrorist Policies Within Israel and the West Bank.

This section attempts two tasks. The first is to describe the counter-terrorist legislation and policies in force within particular areas ruled (or 'administered') by Israel between June 7 1967 and 1 May 1994. The second is to apply the various definitions of (state) terrorism to this description.

In order to start this analytical part of thesis it is first of all necessary to identify the definitions which will be applied. These are:

1) the author's own definition of (state) terrorism:

"the threat or use of violence for political purposes by either non-state organisations anywhere, or the State outside its area of jurisdiction, when such actions are intended to modify the behaviour of target(s) wider than the immediate innocent victim(s); or the use of such purposive violence by the State (when it claims the authority over the immediate victim) when its actions are either illegal (according to its own legislation), or legal but fail to allow the individual victim the opportunity to avoid such purposive violence for example through the retrospective, secret, vague or indiscriminate nature of its enabling legislation, or legislation which does not allow the victim the opportunity to prove their innocence in a court of law".

2) Stohl and Lopez's definition, which has been used by numerous other authors within the literature⁷⁷⁹, and was also one of the two most cited

⁷⁷⁹ Denmark and Lehman's definition can be described as Stohl like. See Denmark R. A. and Lehman H.P. 'South African State Terror: The Costs of Continuing Repression' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Connecticut. 1984.). pp143-166. p147. Also Howard R.E. 'Repression and State Terror in Kenya 1982-1988' in Bushnell P.T., Shlapentokh V., Vanderpool C.K. and Sundriam J. (eds.) *State Organized Terror* (Westview Press. Oxford. 1992.). pp77-98. p78.

by respondents to this authors questionnaire⁷⁸⁰. It stated that terrorism is:

"The purposeful act or threat of violence to create fear and/or compliant behaviour in a victim and/or audience of the act or threat"⁷⁸¹

3) Schmid and Jongman's comprehensive definition of terrorism found within in their 1988 book *Political Terrorism: A new guide to actions, authors, concepts and databases*. It was also one of the two most cited by respondents to this author's questionnaire⁷⁸². For Schmid and Jongman:

"Terrorism is an anxiety-inspiring method of repeated violent action, employed by (semi-) clandestine individual, group, or state actors, for idiosyncratic, criminal, or political reasons, whereby -in contrast to assassination- the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators. Threat -and violence- based communication processes between terrorist (organization), (imperilled) victims, and main targets are used to manipulate the main target audience(s), turning it into a target of terror, a target of demands, or a

⁷⁸⁰ R.E. Howard declared "I wrote an article on Kenya in Schlapentokh et al. I used the Stohl + Lopez definition, which I still find satisfactory". Howard refers to Stohl M. and Lopez G.A. 'Introduction' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport. Conecticut. 1984.).pp3-10.p7-8. Howard R.E. 'Repression and State Terror in Kenya 1982-1988' in Bushnell P.T., Shlapentokh V., Vanderpool C.K. and Sundriam J. (eds.) *State Organized Terror* (Westview Press. Oxford. 1992.).pp77-98. p78. An anonymous respondent wrote 'See attached from a (text) book I've used other definitions but this gives a sense of my perspective' uses Stohl and Lopez "the purposeful act or threat of violence to create fear and/or compliant behaviour in a victim and /or audience of the act or threat". J. Hart wrote "The editors- Michael Stohl + George Lopez provided their own definition which I found reasonable". Reference to Hart J.A. 'U.S. Interventions in Latin America since World War II' in Stohl. M and Lopez G.A. *Terrible Beyond Endurance* (Greenwood Press. Westport, Connecticut.1988) pp59-84. p60. Stohl's definition is that found within Stohl M. 'National Interests and State Terrorism in International affairs'. *Political Science*. Vol. 369. July 1984.).

⁷⁸¹ Stohl M. and Lopez G.A. 'Introduction' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport. Conecticut. 1984.).pp3-10. p7.

⁷⁸² As well as being cited by Schmid himself, B.A. Scharlau wrote that he used it, when he wrote, "Schmid/Jongman, 1988. This occurs in an article (still awaiting completion) on international relations and terrorism".

target of attention, depending on whether intimidation, coercion, or propaganda is primarily sought"⁷⁸³

4) The definition contained within the Prevention of Terrorism Act (and within the Northern Ireland Emergency Provisions Act⁷⁸⁴ since its introduction in 1973). Section 9(1) of the 1974 version of the PTA stated:

"'terrorism' means the use of violence for political ends and includes any use of violence for the purpose of putting the public or any section of the public in fear"

5) An 'Israeli' definition. One derived from Section 1 of Israel's Prevention of Terrorism Ordinance 1949 which stated that "'Terrorist organisation' means a body of persons resorting in its activities to acts of violence calculated to cause death or injury to a person or threats of such acts of violence". In this derived definition terrorism means:

"acts of violence calculated to cause death or injury to a person or threats of such acts of violence"

6) The definition of terrorism use by the Office of the Co-ordinator for Counterterrorism in the production of the U.S. Department of State's 'Patterns of Global Terrorism'. Contained in Title 22 of the United States Code, Section 265f(d). As well as being slightly different to the British and 'Israeli' definitions this was chosen because the US Government sets the agenda for much academic, political and media discussions of terrorism and has employed this definition for statistical and analytical purposes since 1983. Within the act:

"The term 'terrorism' means premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents, usually intended to influence an audience"⁷⁸⁵.

⁷⁸³ Schmid A.P. and Jongman A.J. *Political Terrorism: A new guide to actions, authors, concepts and databases*. (SWIDOC. Amsterdam. 1988.). p28.

⁷⁸⁴ Section 28(1) of Northern Ireland Emergency Provisions Act 1973.

⁷⁸⁵ U.S. State Department. *Patterns of Global Terrorism: 1993*. (Department of State Publication 10136, Office of the Secretary Office of the Coordinator for Counterterrorism.) states "[f]or purposes of this definition, the term 'noncombatant' is interpreted to include, in addition to civilians, military personnel who at the time of the incident are unarmed and/or not on duty. We also consider as acts of terrorism attacks on military installations or on armed military personnel when a state of

The main aim of using all six definitions is primarily to illustrate the problems involved in consistently applying *any* definition of terrorism, and it is expected to lead to a greater insight in the task of defining insurgency terrorism. In addition the section will provide a unique legal description of particular counter-terrorist policies followed by Israel in the West Bank and Israel over the period 1967-1994, and a detailed history of Israeli counter-terrorist actions abroad. Like all 'histories' the selection of time and space is rather artificial and abstract. The areas in which the counter-terrorist measures under scrutiny take place are Israel- that is the enlarged area lying within borders established by force of arms in 1948-9 and the West Bank. As noted within the introductory chapter, the main reason to apply the various definition of state terrorism to the counter-terrorist actions of Israel was to fill two apparent 'gaps' in the terrorism literature. The author's preliminary reading gave the distinct impression that the vast majority, of 'terrorologists' could not conceive of terrorism being undertaken by Western democratic states⁷⁸⁶; whilst a content analysis of Schmid's bibliographical chapter on the topic of 'Regime terrorism and Repression' reveals that the term 'counter-terrorism' or 'counter-terror' was mentioned only once within either the title of the reference or the brief resume of the article and that was a conference paper entitled 'Terror and counter-terror in Nazi Occupied Poland'⁷⁸⁷.

military hostilities does not exist at the site, such as bombings against US bases in Europe or elsewhere".

⁷⁸⁶ Few of the author's read used examples from contemporary 'Western' states. Bell for example wrote that although state terror has long been with us, it has been only a relatively rare option for democratic governments. Bell J.B. *A Time of Terror: How Democratic Societies Respond to Revolutionary Violence* (Basic Books. New York. 1978). p3. Whilst other authors went as far as claiming that 'terrorism' was the antithesis of the 'rule of law', see for example Wilkinson P. *Terrorism and the Liberal State*. (2nd ed. Macmillan. London. 1986.). p66, if not 'Western' values, see for example Netanyahu B. (ed.). *Terrorism: How The West Can Win*. (Farrar Strauss and Giroux. New York. 1986.). A view which seems to be supported by a content analysis of the relevant references within the sub-section of Schmid and Jongman's bibliography in their book *Political Terrorism: A new guide to actions, authors, concepts and databases*. It reveals that only not one of the 196 English language references within the section entitled 'Regime Terrorism and Repression' specifically mentioned Israel. See Schmid A.P. and Jongman A.J. *Political Terrorism: A new guide to actions, authors, concepts and databases*. (SWIDOC. Amsterdam. 1988.). pp259-269.

⁷⁸⁷ See Schmid A.P. and Jongman A.J. *Political Terrorism: A new guide to actions, authors, concepts and databases*. (SWIDOC. Amsterdam. 1988.). p264. Interestingly many of the alleged examples of state terrorism were justified in order to counter terrorism including some of Stalin's show trials, Hitler's reprisals and the repression of various Latin American governments in the late 1970s and early 1980s.

The decision to include an area 'occupied' and 'administered' by Israel was taken because it would test the definitions even further and highlight the problems of the alternative approaches to the concept of terrorism. The choice of the West Bank is a practical one. An application of the various definitions of terrorism to the legislation within the other areas occupied by Israel in 1967 -the Gaza Strip, Golan Heights and Sinai Peninsula- would add little in return for amount of effort invested. This is because the counter-terrorist activities within these other regions do not differ significantly from those enforced within the West Bank, although the numbering, title and basis of the enabling legislation and military orders do. Therefore the vast majority of the 'results' of the application of the various definitions can be deduced from the analysis of the West Bank. In addition there is also a relatively large body of work on Israel's policies within the West Bank upon which to base this work, for it is here that the majority of Palestinians live. Although this section will include examples/statistics which include the Gaza Strip (or other areas of occupied territory) to illustrate various points, for many sources of information do not distinguish between the two.

The starting date of 7 June 1967 was chosen for it was then that the Israeli forces took over the administration of the West Bank⁷⁸⁸ after defeating the armed forces of various Arab nations. This defeat is also significant for it is often seen as having persuaded many Palestinian Arabs that only they remained to fight for Palestine. The result of which was an upsurge in Palestinian violence, including terrorism⁷⁸⁹.

⁷⁸⁸ On December 17 1967 the area became known as Judea/Samaria. Shehadeh R. and Kuttub J. *The West Bank and the Rule of Law: A Study*. (International Commission of Jurists. Geneva .1980.).p10. According to the J.M.C.C. the full title of the relevant legislation was 'Military Order 187. Order Concerning Interpretations (Additional Instructions) (Amendment 3 to Military Order 130)'. Rabah J. and Fairweather N. *Israeli Military Orders in the Occupied Palestinian West Bank. 1967-1992*. (2nd. Ed. Jerusalem Media and Communications Centre. Jerusalem. 1995.). p26. Alternatively Yahav calls it 'The Order Concerning Interpretation (Further Provisions) No. 3. The West Bank Area No. 187. 1967' of 17 December 1967. Yahav D. (ed.). *Israel, The 'Intifada' and the Rule of Law*. (Israel Ministry of Defense. Tel Aviv. 1993.). p24.

⁷⁸⁹ Alon wrote "Palestinian terrorism increased greatly after the Six Day war. In fact, it was the Arab defeat in the 1967 War that boosted terrorism". Alon H. *Countering Palestinian Terrorism in Israel. Towards a Policy Analysis of Countermeasures*. (Rand. Santa Monica. August 1980.). p41. She also notes that on 20 June 1967 *Al-Fatah* announced it was moving its headquarters into the occupied areas

The closing date of 1 May 1994 was chosen for it was then that Israel and the Palestine Liberation Organisation (or P.L.O.) began to implement the self-government arrangements for the Palestinians in Jericho and the Gaza Strip in accord with the Declaration of Principles which they had signed in September of 1993⁷⁹⁰. The P.L.O.'s commitment to resolve the conflict with Israel through peaceful negotiations in this latter year coupled with its renunciation of the use of terrorism and other forms of violence also helped produce a significant reduction in anti-Israeli violence. Although other 'Palestinian groups' such as *Hamas* remained committed to the use of violence including acts of terrorism.

It is because many definitions of state terrorism (including this author's) include a reference to law be it domestic or international⁷⁹¹ that it is necessary to explain the constitutional and legal basis of its actions in order to describe and analyse aspects of Israel's attempts to counter what it labels 'terrorism'. The description of Israel's counter-terrorist policies is complicated by constant changes in the legislation throughout the period of this analysis, and by disputes over what constitutes the correct interpretation of the law, especially in the 'administered region' of the West Bank. In regards to the latter point, it is not unknown for the courts of certain countries to incorrectly interpret the wording of the law for political reasons, a point that is potentially relevant here in terms of The Israeli Supreme Court's disputed interpretation of the wording of particular provisions of international law. Once an explanation of both the constitutional

and attempted to mobilise the masses into fighting a popular liberation war against Israel.

⁷⁹⁰ These agreements followed an earlier exchange of letters, in which the P.L.O recognized Israel's right to exist in peace and security, and Israel recognized the P.L.O. as the representative of the Palestinian people which themselves can be traced back to the Madrid Conference of October 1991.

⁷⁹¹ An example of the former, given in response to this author's questionnaire are Alexander George's view that state terrorism is the "commission of (or threat to commit) acts of unlawful violence with a view to influencing the political behaviour of citizens (Approximately)", and B.A. Scarpaci's claim that "[i]llegal acts (defined by state/civil codes) unleashed upon the citizenry when the latter are usually denied due process of civil courts, thereby subject to military courts and military law" constitute state terrorism. The latter can be seen in the following comments also given in reply to this author's questionnaire. G. Bowen wrote "[w]hen the definition of legal acts contravenes broadly recognized international standards of human rights, then and only then are legal acts also state terrorism"; C.H.Yaeger similarly claimed "[i]f a nation's legal system or constitution, allows acts which violate the United Nations Declaration of [presumably Human] Rights, then I believe that international legality and morality eclipses "legal system" in a sovereign state which allows such violation".

history of Israeli rule in these two areas, and the place of 'international law' within both has been done the six definitions will be applied to the various counter-terrorist policies in order to ascertain whether such practices can be labelled as (state) terrorism. Finally references from this analysis will be used in the concluding chapter in order to illustrate the problems of applying definitions of terrorism.

A Constitutional History of Israel and the 'Administered' Territory of the West Bank.

The Creation of Israel.

Israel is generally seen as having been created on the 14 May 1948 following the issuing of 'The Declaration of the Establishment of the State of Israel' by members of the People's Council's which represented the Jewish Community within Palestine and the Zionist movement abroad⁷⁹². Immediately prior to Israel's rule, the area which would become 'Israel' had been governed as part of Palestine by the United Kingdom since the latter gained a mandate from the League of Nations on 24 July 1922⁷⁹³. Twenty-six years later the U.K. parliament passed the 'Palestine Act 1948' which provided that "His Majesty's jurisdiction in Palestine" would terminate at midnight of 14/15 May 1948⁷⁹⁴. This piece of legislation followed both the U.K.'s declaration in 1947 that it would evacuate Palestine by August 1948 at the latest, and the U.N. General Assembly's passing of the non-binding Resolution 181(2) of 29 November 1947 which envisaged the establishment of both an Arab and Jewish state in Palestine⁷⁹⁵.

On the day the Mandate was to expire (14 May 1948) two notable events occurred. Firstly, a territorial claim based upon the Balfour Declaration, the aforesaid U.N. General Assembly Resolution and the "historic and traditional attachment" of the Jewish people to this land, was made by representatives of various Jewish groups within 'The Declaration of the Establishment of the State of Israel'⁷⁹⁶. Secondly that 56% of

⁷⁹² See wording of 'The Declaration of the Establishment of the State of Israel'. Published by *Iton Rishmi* No2. Supp.1. May 21. 1948. p1; Laws of the State of Israel. (The Government Printer.) Vol.1 p7. reproduced by Badi J. (ed.). *Fundamental Laws of the State of Israel*. (Twayne Publishers. New York. 1961.).p. 8-11. p8.

⁷⁹³ Yahav D. (ed.). *Israel, The 'Intifada' and the Rule of Law*. (Israel Ministry of Defense. Tel Aviv. 1993.). p19.

⁷⁹⁴ Yahav D. (ed.). *Israel, The 'Intifada' and the Rule of Law*. (Israel Ministry of Defense. Tel Aviv. 1993.). p47.

⁷⁹⁵ Quigley J. *Palestine and Israel: A Challenge to Justice*. (Duke University Press. Durham, USA. 1990.). p48. For details of the debate over its legality see pages 45-53.

⁷⁹⁶ Bin-Nun A. *The Law of the State of Israel: An Introduction* (2nd ed Rubin Mass , Jerusalem. 1992.). p3 Footnote 7.

Palestine⁷⁹⁷ allocated for a Jewish nation under the original U.N. plan was 'invaded' by armies of Egypt, Jordan, Syria, Lebanon and Iraq. Intermittent fighting continued for some fifteen months from this date, although sporadic fighting between Arab and Jewish insurgent groups and the British authorities⁷⁹⁸ had in fact been going on throughout the mandate period and increased dramatically following the U.K.'s notice to quit and the U.N. resolution 181(2) in late 1947.

During the first few months of 1949, direct negotiations were conducted under U.N. auspices between Israel and each of the invading countries, and this led to armistices with each of these Arab states (except Iraq which refused to negotiate with Israel)⁷⁹⁹. The area now ruled by the State of Israel reflected the situation at the end of the fighting. Accordingly, the coastal plain, Galilee and the entire Negev came within Israel's sovereignty, the Gaza Strip fell under Egyptian administration, whilst the West Bank of the River Jordan came under Jordanian rule. The city of Jerusalem was divided, with Jordan controlling the eastern part (including the Old City) and Israel the west. However as already noted this 'expanded' *de facto* Israel of 1949 would not be the only area to be administered by the Israeli authorities. Following the Six-Day War of 1967, the government of Israel found itself administering 70,000 or so square kilometres of territory, compared with the 26,000 of pre war Israel⁸⁰⁰. The newly occupied territories contained a population of just

⁷⁹⁷ Quigley J. *Palestine and Israel: A Challenge to Justice*. (Duke University Press. Durham, USA. 1990.).p36. National Lawyers Guild. *Treatment of Palestinians in Israeli-Occupied West Bank and Gaza: Report of the National Lawyers Guild*. (National Lawyers Guild. New York. 1988.). p1.

⁷⁹⁸ It has been implied that a culture of terrorism developed within Israel, as former leaders of insurgent groups such as Irgun Zvai Leumi and Stern Gang [Lehi] and even Haganah continued to use in office the 'terrorism' that they had used in the 'war' against the British and Palestinian Arabs. See for example Quigley J. *Palestine and Israel: A Challenge to Justice*. (Duke University Press. Durham, USA. 1990.).p42 Also P.L.O.'s claim that "Terrorism has been systematically pursued by Israel as an intrinsic policy measure since the signing of the Armistice Agreements in 1949. Although terrorism was practiced by the Zionists before the Israeli state was proclaimed" Palestine Liberation Organisation. (Department of Information and National Guidance). *Crime and No Punishment*. (P.L.O. Beirut. 1974.). p5.

⁷⁹⁹ According to Cattani, Israel signed an armistice with Lebanon on 23 March 1949; Egypt on 24 February 1949; Jordan on 3 April 1949; and Syria on 20 July 1949. Cattani H. *Palestine and International Law: The Legal Aspects of the Arab-Israeli Conflict*. (Longman. London.1973). p24.

⁸⁰⁰ Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.). p35.

over one million persons, almost all of whom were Arab⁸⁰¹. In order to facilitate its rule in this occupied land, Israel divided this newly conquered area into four distinct administrative districts which generally corresponded to the law in place in each, all of which were headed by a regional Military Commander of the Israel Defence Force (I.D.F.)⁸⁰². These were the West Bank (soon to be renamed as Judea/Samaria); the Gaza Strip and Northern Sinai⁸⁰³; the Golan Heights⁸⁰⁴; and the Solomon Region of the Sinai Peninsula⁸⁰⁵.

The West Bank (Judea and Samaria)

The West Bank as it was generally known until 17 December 1967, consists of 5,878 sq. km. of land situated to the east of the 1949 Armistice Line and to the west of the River Jordan. On that date it was renamed 'Judea/Samaria' by the Israeli authorities in accordance with Military Order 187 entitled 'Order Concerning Interpretations (Additional

⁸⁰¹ Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.). p35. Citing S.Gazit *The Administered Areas: Aspects of Israel's Policy*. Information Briefing. (Ministry of Foreign Affairs. Information Division. Jerusalem. 1971.). p1.

⁸⁰² Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.). p35.

⁸⁰³ Like Egypt, Israel never laid a *de jure* claim to sovereignty over the 363 sq. km coastal strip that constitutes the Gaza Strip. Its 356,300 inhabitants remained stateless under Israeli administration. This contrasted them with the 33,400 Egyptian citizens of the Northern Sinai region with whom they would now be ruled in one administrative unit, until this latter area was returned to Egyptian sovereignty on 26 April 1982. See Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.). p36.

⁸⁰⁴ During the Six-Day War the vast majority of the inhabitants of this plateau fled, leaving practically only the 7,500 Druse inhabitants in their villages. As a result of this depopulation as well as the unavailability of Syrian law books, Israel replaced the existing Syrian legal framework with its own military government and security legislation. The Golan Heights was administered in this way until 14 December 1981 when the Knesset passed 'The Golan Heights Law' which extended 'the law, jurisdiction and administration of the State of Israel' to the Golan Heights region in the manner in which it had incorporated, though not legally annexed, Jerusalem fourteen years earlier. Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.).p35-36 and p42-43.

⁸⁰⁵ Situated in the south of the Sinai Peninsula, the Solomon region is a barren desert belonging to Egypt. Under Israeli occupation the inhabitants- mainly 8,000 nomadic Bedouin- retained their Egyptian citizenship and were administered according to the existing Egyptian laws until it was handed back to Egypt on 26 April 1982. Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.). p36.

Instructions) (Amendment 3 to Military Order 130)⁸⁰⁶. The smaller more barren upland plateau of Judea is divided from the larger more populated north which corresponded to biblical Samaria, by the Jerusalem Corridor⁸⁰⁷. The 400,000 inhabitants of the region (excluding East Jerusalem), were allowed to retain their Jordanian citizenship by the Israeli occupiers despite the latter's refusal to recognise Jordan's claim to the sovereignty of that area⁸⁰⁸. Through a series of legal and administrative measures in late June 1967⁸⁰⁹ Israel announced that the former Jordanian ruled section of East Jerusalem and the surrounding villages were no longer to be regarded as 'occupied territory' (even if its sovereignty was disputed). Instead they were to be administered as part of Israel rather than as part of the West Bank. Although this led to debates as to whether or not these enabling measures constituted the formal 'annexation' of East Jerusalem, this area was formally 'annexed' in accordance with Israeli law⁸¹⁰ (but not

⁸⁰⁶ On December 17 1967 the area became known as Judea/Samaria. Shehadeh R. and Kuttab J. *The West Bank and the Rule of Law: A Study*. (International Commission of Jurists. Geneva .1980.).p10. According to the J.M.C.C. the full title of the relevant legislation was 'Military Order 187. Order Concerning Interpretations (Additional Instructions) (Amendment 3 to Military Order 130)'. Rabah J. and Fairweather N. *Israeli Military Orders in the Occupied Palestinian West Bank. 1967-1992*. (2nd. Ed. Jerusalem Media and Communications Centre. Jerusalem. 1995.). p26. Alternatively Yahav calls it 'The Order Concerning Interpretation (Further Provisions) No. 3. The West Bank area No. 187. 1967' of 17 December 1967. Yahav D. (ed.). *Israel, The 'Intifada' and the Rule of Law*. (Israel Ministry of Defense. Tel Aviv. 1993.).p24.

⁸⁰⁷ Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.). p36.

⁸⁰⁸ Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.). p37.

⁸⁰⁹ On 27 June, the government passed two relevant pieces of legislation. The Law and Administration Ordinance (Amendment No.11) Law stated that, '[t]he law, jurisdiction and administration of the State shall extend to any region of Eretz Israel [the land of Israel] designated by the government by order'; whilst 'The Municipal Corporation Ordinance (Amendment) Law' allowed the Minister of the Interior to enlarge any municipality. The next day this was duly done. The municipality of Jerusalem was enlarged with the addition of the eastern part of Jerusalem, and some nearby villages. An enlarged eastern Jerusalem was 'incorporated' into Israel in accordance with section 11b of the 'Law and Administration Ordinance (Amendment No.11) Law' following a government order. Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.). p38-9.

⁸¹⁰ Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.). p42. For the debates surrounding this and the earlier change in the legal status of Jerusalem, see Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.). p38-43.

international law⁸¹¹) with the passing of the new (Basic) law entitled 'Jerusalem The Capital of Israel' on 30 July 1980.

⁸¹¹ Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.). p43.

The Constitutional Form of The State of Israel

The Constitution of Israel

The much cited U.N. resolution 181(2) proposed that the two states in Palestine should have a written constitution⁸¹². However because the 'The Declaration of the Establishment of the State of Israel' was drafted to satisfy as many different 'Israeli' political parties as possible, it deliberately left open the contentious questions 'What constitutional form should this new political entity take?'⁸¹³, and 'Where should its boundaries lie?'. 'The Declaration of Independence' as 'The Declaration of the Establishment of the State of Israel' is better known, explicitly stated that a Constituent Assembly specifically elected for that purpose should draft a constitution within a few months and no later than October 1948⁸¹⁴. On 14 January 1949 the Provisional Council issued 'The Transition to the Constituent Assembly Ordinance'⁸¹⁵, Article 3 of which conferred temporary legislative powers on the Constituent Assembly⁸¹⁶ (unless it wanted otherwise⁸¹⁷). The Constituent Assembly with all its legislative and constitutional powers was duly elected⁸¹⁸ on 25 January 1949 and sat for the first time on 14 February 1949. Three days later it passed the 'Transition Law' according to which it would be called the first Knesset⁸¹⁹.

812 Sprinzak E. 'Elite Illegality in Israel and the Question of Democracy' in Sprinzak E. and Diamond L. (eds.). *Israeli Democracy Under Stress*. (Lynne Rienner, Boulder. Colorado. 1993.). pp173-198. p183.

813 Elazar D. 'Constitution-Making: The Pre-eminently Political Act' in D. Elazar (ed) *Constitutionalism: The Israeli and American Experiences*. (University Press of America. London. 1990.). pp3-29. p19.

814 Zamir I. Introduction: Two Contrasting Constitutional Experiences. in Elazar D. (ed.). *Constitutionalism: The Israeli and American Experiences*. (University Press of America. London. 1990). ppix-xxi. pxi

815 Lucas N. *The Modern History of Israel*. (Weidenfeld and Nicolson. London. 1974.). p281.

816 Sharfman cites Rubenstein A. *Constitutional Law in Israel* (Tel Aviv: Schocken. 1969.). p9 (Hebrew). Sharfman calls it the Transition to the Constituent Assembly Act of 1949. Sharfman D. *Living Without a Constitution*. (M.E. Sharpe. London. 1993.). p38.

817 Lucas N. *The Modern History of Israel*. (Weidenfeld and Nicolson. London. 1974.). p281.

818 Medding P.Y. *The Founding of Israeli Democracy, 1948-1967*. (Oxford University Press. Oxford. 1990.). p16.

819 Sharfman cites Klein C. 'A New Era in Israeli Constitutional Law'. *Israel Law Review*. Vol. 6 (3). 1971. p379. Sharfman D. *Living Without a Constitution*. (M.E.

Later that year the Knesset passed the 'Harari compromise' which stated that a constitution would be enacted gradually in a series of 'Basic Laws'⁸²⁰ to be prepared and submitted to the Knesset by its Constitution, Justice and Law Committee⁸²¹. Subsequently a number of 'Basic Laws' have been passed, but because the Knesset has not produced any legislation that gives prominence to these over its ordinary laws, the Supreme Court of Israel has held that the 'Basic Laws' have no inherent superior status. It was also because of the absence of a law giving the 'Basic Laws' superior normative status the Supreme Court held that 'The Declaration of Independence' was not a "constitutional law which determines the validity or invalidity of ordinances and statutes"⁸²². The result is that if one takes the term 'constitution' to mean a single written document of a special nature, endowed with a force superior to that of other laws, then Israel -like the United Kingdom- does not have a written constitution⁸²³. Instead the Knesset -like the House of Commons- has the power to pass any law it likes⁸²⁴. Therefore at best, Israel -like the U.K.- possess only a "fragmentary written constitution"⁸²⁵ consisting of various documents and statutes of constitutional standing. These include those precepts of 'The Declaration of Independence' which bind the legal and administrative authorities in their application of the law (even if this binding force is at best equal to that of any other legislative enactment and subject to the rule that a

Sharpe. London. 1993.). p38. See also Gross who claimed that on April 4. 1951, the First Knesset adopted the Transition Law (1951), transferring its authorities, rights and duties to the Second Knesset, and to every subsequent Knesset. Gross G.M. 'The Constitutional Question in Israel' in Elazar D. (ed.). *Constitutionalism: The Israeli and American Experiences*. (University Press of America. London. 1990.).pp51-86. p70.

820 Zamir I. Introduction: Two Contrasting Constitutional Experiences. in Elazar D. (ed.). *Constitutionalism: The Israeli and American Experiences*. (University Press of America. London. 1990).pxix-xxi.pxix. Also Sharfman D. *Living Without a Constitution*. (M.E. Sharpe London England.1993.). p44. Kretzmer calls it the "Constitution and Law Committee". Kretzmer D. *The Legal Status of the Arabs in Israel*. (Westview Press Boulder. 1990.). p8.

821 Medding P.Y. *The Founding of Israeli Democracy, 1948-1967*. (Oxford University Press. Oxford. 1990.). p38.

822 See Zeev v. Gubernik (1948) 1 P.D. 85. cited by Kretzmer D. *The Legal Status of the Arabs in Israel*. (Westview Press Boulder. 1990.). p8.

823 Bin -Nun A. *The Law of the State of Israel: An Introduction* (2nd Ed. Rubin Mass. Jerusalem. 1992.). p36.

824 Kretzmer cites Per Berinson J. in *Rogozinski v. State of Israel* (1970) 26 P.D. I 129, 136. Kretzmer D. *The Legal Status of the Arabs in Israel*. (Westview Press Boulder. 1990.).p8.

825 Bin-Nun A. *The Law of the State of Israel: An Introduction* (2nd. Ed. Rubin Mass. Jerusalem. 1992.). p32.

later law prevails over the earlier)⁸²⁶; and various 'Basic Laws' whose constitutional import is derived from their nature or from the inclusion of "entrenched clauses" which require a special majority to amend.

Finally whilst 'The Declaration of Independence' contains a list of civil rights, it does not constitute a 'bill of rights', nor does it confer upon the citizen legally enforceable rights. As the then Prime Minister Ben Gurion put it in a sentence that is equally applicable to the UK: "In a free country like Israel , there is no need for a declaration of freedoms. In this state a person is free to do anything not prohibited by law"⁸²⁷. Instead 'The Declaration' merely expresses society's concept of life, and every authority must be guided in its actions by the principles of it⁸²⁸. Put bluntly, the Knesset is the supreme legislative authority and the Supreme Court can merely carry out a 'judicial review' of the legislature's legislation and its administration in accordance with the procedural rules of 'natural justice'⁸²⁹. The Supreme Court, then fulfils two main functions, it serves as a High Court of Justice and it serves as the final court of appeal in both criminal and civil actions. In its former capacity it could issue orders to all bodies exercising public functions under law, to do or to refrain from doing, any act in the fulfilment of their duties.⁸³⁰

The Constitutional Basis of Israeli Legislation.

The Declaration of Independence stated that:

⁸²⁶ Bin-Nun citing Akzin B. *Reflections on Law and Political Science*. (Jerusalem. 1976.) p137 (Hebrew). Bin -Nun A. *The Law of the State of Israel: An Introduction* (2nd Ed. Rubin Mass. Jerusalem. 1992.). p37

⁸²⁷ Sharfman cites Ben-Gurion Knesset protocols Vol.4 p819. Sharfman D. *Living Without a Constitution*. (M.E. Sharpe. London.1993.). p44.

⁸²⁸ Bin-Nun cites HCJ 262/62,DSC vol 16.p2113. Bin -Nun A. *The Law of the State of Israel: An Introduction* (2nd. Ed. Rubin Mass. Jerusalem. 1992.). p37.

⁸²⁹ Kretzmer D. *The Legal Status of the Arabs in Israel*. (Westview Press Boulder. 1990.).p14. Whilst Bin-Nun wrote that in its capacity as the High Court of Justice, the H.C.J. is called upon to preserve those rights and to grant the citizen the requested relief when one of his basic freedoms is infringed by an act of the authorities. See HCJ 151/71 DSC vol 2591) p782. Bin-Nun A. *The Law of the State of Israel: An Introduction* (2nd ed Rubin Mass , Jerusalem. 1992). p61.

⁸³⁰ Kretzmer D. *The Legal Status of the Arabs in Israel*. (Westview Press Boulder. 1990.). p13.

"until the establishment of the elected regular authorities of the State in accordance with the Constitution which shall be adopted by the Elected Constituent Assembly not later than 1 October 1948, the People's Council shall act as a Provisional Council of State, and its executive organ, the People's Administration, shall be the Provisional Government of the Jewish State, to be called "Israel" "831.

The 'People's Council' -which became the 'Provisional Council of State' following 'The Declaration of Independence'- had been formed in March of 1948. It consisted of the elected representatives of both the National Council of the Jewish Community (in Palestine) and the Zionist Executive and co-opted members of various groups not represented in these two bodies⁸³². Following 'The Declaration of Independence' the first act of the new Provisional Council of State was to issue a 'Proclamation' on 14 May 1948 by which it declared itself to be the 'legislative authority' for the State of Israel. In addition, in order to prevent the emergence of a legal vacuum the 'Proclamation' provided some continuity for the legal system by proclaiming that:

"So long as no laws have been enacted by or on behalf of the Provisional Council of State, the law which existed in Palestine on 5 Iyar 5708 (14th May 1948) shall continue in force in the State of Israel, in so far as such continuance in force is consistent with the contents of this Proclamation, with the future laws and with the changes arising from the establishment of the State and its authorities"⁸³³

To reinforce this idea, a week later⁸³⁴ the Provisional Council passed the 'Law and Administrative Ordinance' (which is also known as 'Law and Government Ordinance'). Section 11 provided for the continuation and retention of the existing laws by stating:

⁸³¹ Quoted by Rudolph H. *Security, Terrorism and Torture. Detainees Rights in South Africa and Israel: A Comparative Study* (Juta and Co. Cape Town .1984). p65. The Constituent Assembly was not actually elected until 25 January 1949.

⁸³² Medding P.Y. *The Founding of Israeli Democracy, 1948-1967*. (Oxford University Press. Oxford. 1990.). p14.

⁸³³ 'Proclamation' Published by *Iton Rishmi*. No.1 May 14. 1948. p3; *Laws of the State of Israel*. (The Government Printer.) Vol.1 p6. reproduced by Badi J. (ed.). *Fundamental Laws of the State of Israel*. (Twayne Publishers. New York. 1961.). p12.

⁸³⁴ Gross G.M. 'The Constitutional Question in Israel' in Elazar D. (ed.). *Constitutionalism: The Israeli and American Experiences*. (University Press of America. London. 1990.). pp51-86. p72.

"The law which existed in Palestine on 5 Iyar, 5708 (14th May, 1948) shall remain in force, in so far as there is nothing therein repugnant to this Ordinance or other laws which may be enacted by or on behalf of the Provisional Council of State, and subject to such modification as may result from the establishment of the State and its authorities" 835.

Whilst Section 23 of the 'Law and Administrative Ordinance' declared that it was to have effect retroactively⁸³⁶ as from the eve of 15 May 1948. This method of 'absorbing' existing legislation paralleled that of the British when they took over the rule of Palestine from the Turks 26 years earlier. Using Article 46 of the Palestine Order-in-Council, 1922, the British insisted that the prevailing Ottoman law would remain in force unless modified by its legislation. The result was that during the British Mandatory period and in the immediate period of Israeli control, most of the law in force in Palestine was Ottoman (except for matters of personal status, marriage and divorce which were handled by each religious community in accordance with the Ottoman *millet* system). Whilst any gaps between the three were filled by the courts using the rules of British common law and equity⁸³⁷.

It was *via* this absorption process that Israel incorporated the existing Criminal Code Ordinance (1936), which the British Mandatory authorities had themselves based on a colonial office model originally prepared for Cyprus⁸³⁸. This piece of legislation was replaced in 1977 by the Penal Code - a spruced up, more logically arranged version of the British code, expanded by the inclusion of offences and penalties from the scattered provisions of Israeli special legislation⁸³⁹. The 'principle' of using British common law to fill any legal gaps (or *lacunae*) was ended by 'The Law and Administration (Amendment No.14)

835 Published by *Iton Rishmi* No2. Supp.1. May 21. 1948. p1; *Laws of the State of Israel*. (The Government Printer.). Vol.1 p7. reproduced by Badi J. (ed.). *Fundamental Laws of the State of Israel*. (Twayne Publishers. New York. 1961.). p13.

836 Rudolph H. *Security, Terrorism and Torture. Detainees Rights in South Africa and Israel: Comparative Study* (Juta and Co. Cape Town .1984). p66. Footnote 8.

837 Kretzmer D. *The Legal Status of the Arabs in Israel*. (Westview. Boulder. 1990.). p12.

838 Bin-Nun A. *The Law of the State of Israel: An Introduction*. (2nd Ed. Rubin Mass. Jerusalem. 1992.). p104.

839 Bin-Nun A. *The Law of the State of Israel: An Introduction* (2nd Ed. Rubin Mass. Jerusalem. 1992.). p104.

Ordinance'⁸⁴⁰ and 'The Foundations of Law 1980 (Final Emancipation) Act'⁸⁴¹.

However in contrast to many other countries where the existence of criminal evidence makes prosecution mandatory, Israel still retained the Anglo-Saxon 'public interest' principle within its law, by which the decision to prosecute is applied to each case. Although the law itself does not disclose how the term "public interest" is to be understood⁸⁴².

Finally in terms of Israel's constitutional framework it is worth noting the relationship between international law and the domestic law of Israel, but to do that it is necessary to make one or two points about international law.

International Law and the Israeli Legal System.

Basically there are two types of international law of concern to this part of the thesis. The more tangible of the two is that known as 'international treaty law' or 'contractual international law'; the other is that called 'international customary law' which is not generally found within treaties, although it can be. If an international treaty merely

⁸⁴⁰ 'The Law and Administration (Amendment No. 14) Ordinance' stated that: "Any provision of a law that requires such laws or any expressions therein to be interpreted in accordance with English law or with principles of legal interpretation obtaining in England, shall no longer be binding". Bin-Nun A. *The Law of the State of Israel: An Introduction* (2nd Ed. Rubin Mass. Jerusalem. 1992.). p20. Whilst in 1957, the Supreme court decided that English case law was binding only in so far as it was in force at the time of the establishment of the State of Israel Bin-Nun cites Civ A81/55, DSC. Piskei-Din Vol.11.p225. Bin-Nun A. *The Law of the State of Israel: An Introduction* (2nd Ed. Rubin Mass. Jerusalem. 1992.). p9-10.

⁸⁴¹ The first section of which which repealed the use of English law as a subsidiary source. Whilst the second section stated "Where the court, faced with a legal question requiring decision, finds no answer to it in statute law nor in case law nor by analogy, it shall make the decision in accordance with the principles of freedom, justice, equity, and peace, found in Jewish tradition". Bin-Nun A. *The Law of the State of Israel: An Introduction* (2nd ed Rubin Mass, Jerusalem. 1992.). p10. Also Kretzmer D. *The Legal Status of the Arabs in Israel*. (Westview. Boulder. 1990.). p20.

⁸⁴² Bin-Nun cites section 62 of the 'Criminal Procedures Law (Consolidated Version). 1982. which states "Where it appears to the Attorney general....that there is sufficient evidence to charge a particular person, he shall prosecute him unless he is of the opinion that public interest is not involved". Bin-Nun A. *The Law of the State of Israel: An Introduction* (2nd ed. Rubin Mass. Jerusalem. 1992.). p122.

codifies existing international customary law it can be described as 'declaratory'⁸⁴³. Alternatively if its contents are innovative it can be described as a 'constitutive' treaty. Here it is worth noting that some treaties contain both constitutive and declaratory elements and that some treaties which were initially constitutive may become declaratory with the passing of time, and the development of custom⁸⁴⁴.

The second point worth noting is that for those international law scholars known as 'dualists' the fact that a nation has signed or even ratified an international treaty does not necessarily make its provisions enforceable within the domestic jurisdiction of individual state (although it would bind the state in regards to its inter-national or state-to-state commitments). This is usually because the State in question needs to pass specific domestic legislation to incorporate the relevant provisions of the international treaty into its legal system and to make its laws enforceable.

In the Israeli legal system (as in most states) international custom is automatically part of municipal law, and there is no need for an act of transformation⁸⁴⁵. Although it should be noted that the existence of an international custom must be proven by whoever wished to rely upon it⁸⁴⁶. Moreover this does not mean that such customs overrule any domestic made law that contradicts the customary international law. Indeed if there is a clear contradiction between the custom of international law and a provisions of Israeli municipal law -and the Israeli court could not resolve the issue after attempting to interpret Israeli law as far as possible so that it may conform to the international rule- then the Israeli courts (like the British) must prefer the provisions of the municipal law⁸⁴⁷.

⁸⁴³ Lapidoth R. 'International Law Within the Israel Legal System'. *Israel Law Review*. Vol 24 (3-4). 1990. pp450-485. p458.

⁸⁴⁴ Lapidoth R. 'International Law Within the Israel Legal System'. *Israel Law Review*. Vol 24 (3-4). 1990. pp450-485. p458.

⁸⁴⁵ A position adopted very early by the supreme Court in *Shimson v Attorney General* (1951) 9 P.E. 14., Lapidoth R. 'International Law Within the Israel Legal System'. *Israel Law Review*. Vol 24 (3-4). 1990. pp450-485. p452.. See also Yahav D. (ed.). *Israel, The "Intifada" and the Rule of Law*. (Israel Ministry of Defense. Tel Aviv. 1993.). p22.

⁸⁴⁶ Lapidoth R. 'International Law Within the Israel Legal System'. *Israel Law Review*. Vol 24 (3-4). 1990. pp450-485. p455.

⁸⁴⁷ Lapidoth R. 'International Law Within the Israel Legal System'. *Israel Law Review*. Vol 24 No. 3-4 1990 pp450-485. p456 and 457.

In addition, even if Israel has signed and ratified a (constitutive) international treaty, any provisions relating to the treatment of those living within Israel are not absorbed automatically into Israeli law. Instead further specific parliamentary legislation is required in order to transform the provisions into Israeli law⁸⁴⁸. Although if international customs are contained in a constitutive convention, then these rules will be absorbed automatically into Israeli law. In practice however the Knesset often produces legislation which transform the relevant provisions of a particular international treaty into municipal law. Perhaps the most famous of these was the enactment of 'The Crime of Genocide (Prevention and Punishment) Law' of 1950 which incorporated the 1948 international treaty into the Israeli legal system⁸⁴⁹.

The importance of this issue to this section of the thesis can be expressed as the question 'Are there any provisions of international law which are both relevant to this study of counter-terrorist legislation in *Israel*, which are enforced by the Israeli courts?'. The answer to this is 'No'⁸⁵⁰. So despite Israel's signing and ratification of both the 'Convention Against Torture and other Cruel, Inhuman or Degrading

⁸⁴⁸ Lapidoth R. 'International Law Within the Israel Legal System'. *Israel Law Review* Vol 24 (3-4). 1990 pp450-p485. p455. The 'exception' to this rule (albeit based on other constitutional grounds) was the decision by the Supreme Court to view the Terms of British Mandate for Palestine 1922 as binding in municipal law despite the absence of an act of transformation. See Lapidoth R. 'International Law Within the Israel Legal System'. *Israel Law Review* Vol 24 (3-4). 1990. pp450-p485. p469-470. The rationale for this relies on the separation of powers doctrine. An acceptance of the automatic incorporation of treaty law in Israeli law would allow the government which is empowered to conclude and ratify treaties to introduce norms into the Israeli judicial system without the consent of The Knesset. As Lapidoth has pointed out, the same logic should apply to the absorption of customary laws which is the result of the governments action or inaction. See Benvenisti E. 'The Applicability of Human Rights Conventions to Israel and to the Occupied Territories'. *Israeli Law Review* Vol26.(1).Winter 1992 pp24-35. p25.

⁸⁴⁹ Lapidoth R. 'International Law Within the Israel Legal System'. *Israel Law Review*. Vol 24 No. 3-4. 1990. pp450-485. p462

⁸⁵⁰ Unless one includes the (all embracing) wording of The Crime of Genocide (Prevention and Punishment) Law, 5710-1950. Article 1 (a) of which can be read as forbidding the use of violence to uphold laws for it outlaws, as a result of the fact that the "Killing" or "Causing serious bodily or mental harm to" members of a "national, ethnical, racial or religious" group. This interpretation will be avoided by distinguishing between the security forces use of violence against individuals of a particular group from what they have individually done, rather than violence aimed at the group to which such an individual may belong because of who they are.

Treatment or Punishment' (C.A.T.⁸⁵¹) -which outlaws the use of torture- and the 'International Covenant Civil and Political Rights' (I.C.C.P.R.⁸⁵²) -which also outlaws torture⁸⁵³ amongst other things including arbitrary arrest⁸⁵⁴- neither can be enforced within the courts of Israel because neither piece of legislation has been incorporated into Israeli law.

⁸⁵¹ Signed 22 October 1986 ratified 4 August 1991.

⁸⁵² Signed 19 Dec 1966, Ratified 18 August 1991, with a derogation on article 9, which 'outlaws' "arbitrary arrest or detention" which *could* be interpreted as implying that Israel realise that it does this to people.

⁸⁵³ Article 7 declares "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment...".

⁸⁵⁴ Article 9 declares " ...No one shall be subjected to arbitrary arrest or detention..."

The Counter-Terrorist Legislation Enforced by Israel Within Israel.

There are three main pieces of security legislation by which Israel attempts to counter-terrorism in Israel itself, each of which constitutes a piece of emergency legislation. The principal piece of security legislation by which Israel attempted to counter terrorism in Israel up until 1980 was 'The Defence (Emergency) Regulations of 1945' (or D.E.R.). Like the Criminal Code itself the D.E.R. was introduced into Israeli law *via* Section 11 of the Law and Administration Ordinance in 1949. The incorporation of the D.E.R. in this way meant that the only notable differences from the previous British version was Israel's repeal of those sections that aimed to prevent 'illegal' Jewish immigration to Palestine; and which demanded the use of the English language in law making⁸⁵⁵. The only other change was in terminology. For example the term 'General Officer Commanding' for example was replaced by that of 'Chief of the General Staff', whilst the powers of the 'High Commissioner', the 'High Commissioner in Council', or the 'Government of Palestine' were vested in the Provisional government, which was in turn transferred to the Minister of Defence⁸⁵⁶.

The irony of Israel's incorporation of this law was that the Defence (Emergency) Regulations of 1945 were passed in order to grant the military the powers to crush the growing Jewish resistance movement⁸⁵⁷. As such they had been castigated by many Jewish leaders both before⁸⁵⁸ and after⁸⁵⁹ the creation of Israel. The most relevant

⁸⁵⁵ By Sections 14, and 13 (a) and 15(b) of the Law and Administration Ordinance 1948 respectively. Rudolph H. *Security, Terrorism and Torture. Detainees Rights in South Africa and Israel: Comparative Study* (Juta and Co. Cape Town .1984.). p66.

⁸⁵⁶ Rudolph H. *Security, Terrorism and Torture. Detainees Rights in South Africa and Israel: Comparative Study* (Juta and Co. Cape Town .1984.). p69.

⁸⁵⁷ Kretzmer cites Bracha B. 'Restriction of Personal Freedom Without Due Process of Law. *Israel Yearbook on Human Rights*. Vol. 8. (1978) p296. Kretzmer D. *The Legal Status of the Arabs in Israel*. (Westview. Boulder 1990.). p13.

⁸⁵⁸ According to Kretzmer these included Federation of Hebrew Lawyers. Kretzmer cites the minutes of a protest meeting of the Jewish Lawyers Bar Association (7 February 1946), attended by leading members of the bar, some of whom, such as Bernard (Dov) Joseph and Y.S. Shapira, were to hold major legal posts after independence (See (1946) 3 *HaPraklit* 58), and Joseph B. *British Rule in Eretz Yisrael, The Failure of a Regime* (Mossad Bialik. Jerusalem. 1948.). p220-229. Joseph who would become Israel's Minister of Justice, wrote of these Regulations (at 223): "Freedom of the individual in Eretz Yisrael is something of the past or a hope for the

criticisms included the description of the D.E.R. (or aspects of it) as "the terror laws of a repressive state"⁸⁶⁰; "officially licensed terrorism"⁸⁶¹ and "legal terrorism"⁸⁶² by none other than a future Israeli Prime Minister (Menachem Begin); a future Minister of Justice (Dr Bernard Joseph) and the intellectual leader of the right wing Gahal party (Hans Klinghoffer), respectively. Indeed in *Leon vs. Gubernik* a n unsuccessful legal challenge to the absorption of the Defence Emergency Regulations was made on the grounds that a democratic Jewish nation based on the 'rule of law' and protection of individual civil liberties could not accept regulations which had been enacted by a foreign occupier with the object of harming the Jewish population of Palestine.⁸⁶³ Other more convincing reasons for viewing the absorption of the D.E.R. as 'illegal' were that some of its provisions were contrary to the articles of the original British Mandate⁸⁶⁴; and

future: in all events it does not exist at present. See also Bracha B. 'Restriction of Personal Freedom Without Due Process of Law' *Israel Yearbook on Human Rights* Vol. 8.(1978) 296. Kretzmer D. *The Legal Status of the Arabs in Israel*. (Westview. Boulder 1990.).p13. Sharfman similarly wrote "the prestate Jewish community stongly protested these arbitrary regulations, viewing them as an instrument of suppression". Sharfman D. *Living Without a Constitution*. (M.E. Sharpe. London. 1993.).p46.

⁸⁵⁹ According to Sharfman, Arie Ben-Eliezer of Herut contended that the law could be turned against every citizen in the country and said that he considered it fascist". Sharfman cites *Knesset protocols* Vol.2 p984. Sharfman D. *Living Without a Constitution*. (M.E. Sharpe. London. 1993.).p46. He also notes that the Knesset adopted a resolution stating that the emergency laws contradicted the fundamental principles of democracy" Sharfman cites *Knesset Protocols* Vol.8. pp1828, 1831. Sharfman D. *Living Without a Constitution*. (M.E. Sharpe. London. 1993.). p47.

⁸⁶⁰ Dowty cites, Menachen Begin in 1951 Knesset debate *Divrei Haknesset* May 21 1951 in Dowty A. 'Emergency Powers in Israel: The Devaluation of a Crisis ' in Leng. S (ed.). *Coping With Crisis* (University Press of America. Lanham. 1990.). pp1-43. p7.

⁸⁶¹ Adams cites (Jiryis who cites) Dov, "With regard to the Defence Laws themselves, the question is: Are we all to become the victims of officially licensed terrorism, or will the freedom of the individual prevail?There is nothing to prevent a citizen from being imprisone all his life without a trial.....and the administration has unrestricted freedom to banish any citizen at any moment" Dr. Bernard Dov in 1946 Jiryis S. *The Arabs in Israel*. Institute for Palestine Studies" Beirut (No other reference) cited by Adams M. 'Israel's treatment of the Arabs in the Occupied Areas' (International Committee for Palestinian Human Rights Paris. 1976.). p7.

⁸⁶² Klinghoffer told Dershowitz that he was unalterably oppose to "this unpardonable exception to the rule of law"."Terrorists must be imprisoned, " he declared , "but not by means of legal terrorism." Dershowitz A. 'Preventative Detention of Citizens During a National Emergency - A Comparison Between Israel and The United States. *Israel Yearbook on Human Rights*. Vol.1 1971. pp295-321. p313.

⁸⁶³ Rudolph H. *Security, Terrorism and Torture. Detainees Rights in South Africa and Israel: Comparative Study* (Juta and Co. Cape Town .1984). p66. Rejected in *Leon vs Gubernik*.

⁸⁶⁴According to the Israeli Supreme Court in *Leon vs Gubernik* all Mandatory Regulations including the D.E.R. were subordinate to the articles of the Mandate and

that the D.E.R. of 1945 had been revoked with effect from midnight of 13/14 May 1948 by the British *via* the 'Palestinian (Revocations) Order in Council'⁸⁶⁵ making its absorption of the D.E.R. in accordance with Section 11 impossible and hence illegal. Although it must be said that neither of these interpretations have persuaded the Israeli H.C.J. that the D.E.R. do not constitute laws of Israel. The former had also been rejected under Britain's rule, a tradition continued by the H.C.J. in the *Al-Karbutli* case⁸⁶⁶; whilst the view that the 'Palestinian (Revocations) Order in Council' had revoked the D.E.R. was rejected on the grounds that the former 'Revocation' had never become law because it was never published within *Palestine Gazette* as Section 11 of the Law and Administration Ordinance required⁸⁶⁷.

therefore subject to the courts scrutiny. Rudolph H. *Security, Terrorism and Torture. Detainees Rights in South Africa and Israel: Comparative Study*. (Juta and Co. Cape Town .1984.).p66 Article 2 of which had provided for the "safeguarding [of] the civil and religious rights of all inhabitants of Palestine, irrespective of race or religion". Rudolph H. *Security, Terrorism and Torture. Detainees Rights in South Africa and Israel: A Comparative Study* (Juta and Co. Cape Town. 1984.). p63

⁸⁶⁵ The Palestinian (Revocations) Order in Council revoked the D.E.R. which was originally made in terms of the Palestine (Defence) Orders in Council 1937. Rudolph H. *Security, Terrorism and Torture. Detainees Rights in South Africa and Israel: A Comparative Study* (Juta and Co. Cape Town. 1984.). p66. See also Moffett M.R. *Perpetual Emergency: A Legal Analysis of Israel's Use of the British Defence (Emergency) Regulations, 1945, in the Occupied Territories*. (Al-Haq. Ramallah. 1989.).p6-7.

⁸⁶⁶ *Al-Karbutli v. Minister of Defence et al.* Here the H.C.J. pronounced that Regulation 111 "does not violate the general principle of the Mandate". HC7/48;2PDS. Cited by Rudolph H. *Security, Terrorism and Torture. Detainees Rights in South Africa and Israel: A Comparative Study* (Juta and Co. Cape Town .1984.). p66.

⁸⁶⁷ Section 11A of the Law and Administration Ordinance stated that "(a) An unpublished law has no effect and never had any effect" (b) "Unpublished law", in this section, means a law within the meaning of the Interpretation Ordinance 1945, which purported to have been enacted during the period between 16 Kislev 5708 (29 November 1947) and 6 Iyar 5708 (15 May 1948) and which was not published in the *Palestine Gazette* despite its being a law of a category publication of which in the *Palestine Gazette* was, immediately prior to that period, obligatory or customary". Rudolph H. *Security, Terrorism and Torture. Detainees Rights in South Africa and Israel: A Comparative Study* (Juta and Co. Cape Town .1984.).p66. It appears that British law did not require this. Moffett M.R. *Perpetual Emergency: A Legal Analysis of Israel's Use of the British Defence (Emergency) Regulations, 1945, in the Occupied Territories*. (Al-Haq. Ramallah. 1989.). p12-13. She also notes that it was not published at all during April due to the civil war conditions. Al-Haq cite Lord Glenarthur, the then Foreign Office minister in the House of Lords, who said, "Israeli apologists sometimes argue that these punishments are provided for in regulations surviving from the British mandate. Let me take this opportunity to make clear...that such is not the view of Her Majesty's government. as a result of the palestine (Revocations) Order in Council 1948, the Palestine Defence Order in Council 1937, and the defence regulations made under it, have not been in force, as a matter of English law, since the making of the 1948 revocation order. If the Israelis now seek to apply the same or similar regulations, that is their decision for which they must take responsibility." Hansard (Official Records,

The D.E.R. was replaced in 1980 by the Emergency Powers (Detention) Law 1979. The latter therefore constitutes one of the other two main pieces of counter-terrorist legislation, along with the 'Prevention of Terrorism Ordinance 1948' (or P.T.O.). Whilst the former deals with the (administrative) powers to detain and deport 'terrorists' from Israel since 1979, the P.T.O. defines particular offences surrounding membership and support for what are labelled 'terrorist' groups. Like the D.E.R. both these pieces of counter-terrorist legislation constitute pieces of emergency legislation, albeit of a different type than the Defence (Emergency) Regulations. In contrast to the incorporated D.E.R. which stood alone as a distinct type of emergency legislation, the Prevention of Terrorism Ordinance 1948 and the Emergency Powers (Detention) Law 1979 constitute legislative or Knesset made emergency legislation. As such they require the existence of a state of emergency in order to be valid although Israel has been in such a state of emergency since one was declared in the *Official Gazette* on 21 May 1948.

Finally in terms of the legislation used to counter-terrorism in Israel, it is worthwhile giving a mention to the third type of emergency legislation that exists in Israel, that known as the executive made temporary emergency legislation. Government ministers can issue temporary emergency regulations under Section 9(a) of the Law and Administration Ordinance of 1948. It states:

"[u]pon such declaration being published in the *Official Gazette*, the Provisional Government [may] authorise the Prime Minister or any other Minister to make such emergency regulations as...seem to him expedient in the interests of the defence of the State, public security and the maintenance of supplies and essential services"⁸⁶⁸.

House of Lords), 22 December 1988. p665. Cited by Welchman L. *Israel's Demolition and Sealing of Houses in the Occupied Palestinian Territories*. (Al-Haq. Ramallah. 1993.Occasional Paper No.11.). p16.

⁸⁶⁸ Rudolph H. *Security, Terrorism and Torture. Detainees Rights in South Africa and Israel: A Comparative Study* (Juta and Co. Cape Town .1984.).p67. Also R.Shedah. *Occupier's Law: Israel and the West Bank*. (Revised ed. Institute for Palestinian Studies. Washington 1988.). p65.

Such emergency regulations could according to Section 9(b) be promulgated to 'alter any law, suspend its effect or modify it....'⁸⁶⁹ with perhaps the exception of those laws that expressly forbid this such as the 'Basic Laws' and other constitutional laws which some believe would require cabinet approval to be valid⁸⁷⁰. According to Section 9(c) such emergency legislation would expire 3 months after they were made, unless they were either revoked at an earlier date, extended by the Knesset, or and the state of emergency would continue until a contrary decision was made by the Provisional Council of State (Section 9(d))⁸⁷¹. When that occurred the emergency regulations would expire on the date or dates prescribed in the declaration⁸⁷². Over 300 such emergency regulations were enacted in this way⁸⁷³ from 1948 to the end of 1985 . A relevant example of this is the Emergency Regulations (Arrests in Special State of Emergency) 5742-1982 which allowed government to proclaim a special state of emergency (in Lebanon) during which a military officer of the rank of Brigadier-General (*Tat-Aluf* ⁸⁷⁴) could for security reasons arrest a person who is not a citizen or a resident of Israel⁸⁷⁵.

However before going on to explain the legal basis of Israel's attempts to counter terrorism in the West Bank this is a useful place to explain the fact that "a dual legal system"⁸⁷⁶ operates in the West Bank. The result of which is that Jewish residents of the region are theoretically accountable to 'both' the counter-terrorist legislation in force in Israel and that legislation which covers the non-Israelis in the region. This dual system was created on July 2, 1967 following the Knesset enacted

⁸⁶⁹ Rudolph H. *Security, Terrorism and Torture. Detainees Rights in South Africa and Israel: Comparative Study* (Juta and Co. Cape Town .1984.). p67.

⁸⁷⁰ Shetreet S. 'A Contemporary Model of Emergency Detention Law: An Assessment of the Israeli Law' *Israel Yearbook on Human Rights*. Vol 14. 1984. pp182-220. p190.

⁸⁷¹ Rudolph H. *Security, Terrorism and Torture. Detainees Rights in South Africa and Israel: Comparative Study* (Juta and Co. Cape Town .1984.). p67.

⁸⁷² Rudolph H. *Security, Terrorism and Torture. Detainees Rights in South Africa and Israel: Comparative Study* (Juta and Co. Cape Town .1984.). p67.

⁸⁷³ Dowty A. 'Emergency Powers in Israel: The Devaluation of a Crisis ' in Leng. S (ed.). *Coping With Crisis*. (University Press of America. Lanham. 1990.). pp1-43. p26.

⁸⁷⁴ Katz equates the two. Katz S.M. *Guards Without Frontiers: Israel's War Against Terrorism*. (Arms and Armour. London. 1990.). p10.

⁸⁷⁵ Emergency Regulations (Arrests in Special State of Emergency) 5742-1982 Kovetz Hatakanot (Regulations issued by Israel Government Ministries) (No. 4361) 1182 (9 June 1982).

⁸⁷⁶ Tsemel L. 'Double Standard Justice in Israel: The Case of the Jewish Terror Organization'. *Palestine Yearbook of International Law*. Vol. 2. 1985. pp37-68.p39.

'Emergency Regulations (Offences Committed in the Israel-held Areas-Jurisdiction and Legal assistance) Law'. On the basis of these regulations Israeli courts became competent to try Israeli offenders who committed offences in the West Bank⁸⁷⁷. This was renewed in December and extended for a year until December 1968, and it has since been renewed annually⁸⁷⁸. The 'Explanatory Note' which accompanied these Regulations sheds light on their aims. It declares:

"Another aim of the Regulations was to enable the courts in Israel to try an Israeli resident who committed in the Occupied an offence which would have been punishable had it been committed in Israel. (Regulation 2)".

It also made clear that the new Regulation (2(c)) was designed to clarify the original intention of the legislature. It now read: "This regulation shall not apply to a person who at the time of the act or omission was a resident of one of the regions". Then in 1975 Regulation 2 was amended once more adding further precision to this requirement⁸⁷⁹. According to Tsemel, this legislation has reversed the practice whereby Israelis used to be tried before military courts in the West Bank for offences against military orders and, in practise has restricted their use to Palestinians only⁸⁸⁰. In one court case involving Jewish 'terrorists'

⁸⁷⁷ Tsemel L. 'Double Standard Justice in Israel: The Case of the Jewish Terror Organization'. *Palestine Yearbook of International Law*. Vol. 2. 1985. pp37-68. p39. Article 2(a) of which stated that: "A court in Israel shall be competent to try under Israel law any person who is in Israel for an act or omission which occurred in any region and which would constitute an offence if it had occurred in the area of jurisdiction of the courts of Israel".

⁸⁷⁸ Tsemel L. 'Double Standard Justice in Israel: The Case of the Jewish Terror Organization'. *Palestine Yearbook of International Law*. Vol. 2. 1985. pp37-68. p39-40. In footnote 3 she notes that in 1977 the name was changed to the "Emergency Regulations (Judea and Samaria, Gaza Region, Golan Heights, Sinai and Southern Sinai-Criminal jurisdiction and Legal Assistance) (Extension of Validity Law)". See 32 Laws of the State of Israel, at 58.

⁸⁷⁹ Regulation 2(a) and (c) now read: "2. (a) A court in Israel shall be competent to try under Israeli law any person who is in Israel, or is registered in the Population Register under the Population Registry law, 1965, for an act or omission which occurred in any region and which would constitute an offence if it had occurred in the area of jurisdiction of the courts in Israel"

(c) This regulation shall not apply to a person who at the time of the act or omission was a resident of one of the regions and was not registered in the Population Register as specified in subregulation (a)". 29 laws of the State of Israel, at 306. Tsemel L. 'Double Standard Justice in Israel: The Case of the Jewish Terror Organization'. *Palestine Yearbook of International Law*. Vol. 2. 1985. pp37-68. p40.

⁸⁸⁰ Tsemel L. 'Double Standard Justice in Israel: The Case of the Jewish Terror Organization'. *Palestine Yearbook of International Law*. Vol. 2. 1985. pp37-68. p40-1.

Justice Barak claimed that Regulation 2(a) had been introduced to prevent a situation whereby an Israeli would be brought before a military court for the committing acts of a "criminal" nature, since the military courts were there to try security violators⁸⁸¹.

The result according to Tsemel, is a "double standard" in the treatment of those in the West Bank suspected of similar terrorist offences. Unlike non-Israeli suspected terrorists, Israelis in the West Bank are usually charged in accordance with the 'Prevention of Terrorism Ordinance', the penalties for which are less severe than they are for similar offences under the Defence Emergency Regulations, by which they could have been prosecuted⁸⁸² and Arabs are. Although this double standard and differential treatment does not apply within Israel where both Jews and Arab-Israelis are judged by the same laws.

⁸⁸¹ Tsemel L. 'Double Standard Justice in Israel: The Case of the Jewish Terror Organization'. *Palestine Yearbook of International Law*. Vol. 2. 1985. pp37-68. p41. The case of the Jewish Underground 1984.

⁸⁸² See Tsemel L. 'Double Standard Justice in Israel: The Case of the Jewish Terror Organization'. *Palestine Yearbook of International Law*. Vol. 2. 1985. pp37-68.p42-45.

The Rule of Israel In The West Bank.

The Legal Foundations of Israel's Counter-Terrorist Legislation.

As the Israeli Defence Forces (I.D.F.) established effective control over areas of the Gaza Strip and the West Bank on the 7 June 1967, it announced that it was assuming the functions of government in accordance with Article 43 of the Hague Regulations by issuing 'Proclamation of the Assumption of Government' (Proclamation No. 1). On the same day the I.D.F. also issued Proclamation No.2, 'The Law and Administration Ordinance'⁸⁸³. This provided for a secondary legislative strata and set up a structure to administer the functions of government. According to Article 3 of Proclamation No.2, each I.D.F. regional commander assumed all the legislative and administrative powers of the displaced government within his region and became the supreme legislator⁸⁸⁴. Just as the Provisional Council of State in Israel had incorporated the existing laws into the new state, the regional commander incorporated the existing laws in the West Bank region via Proclamation No.2. proclamation. Article 2 of which stated that:

"The law which existed in the area on 7 June, 1967 shall remain in force to the extent that it does not contain anything incompatible with this Proclamation, any other Proclamation or Order which will be enacted by me, and subject to such

⁸⁸³ Military Proclamation 2. Concerning Regulation of Authority and the Judiciary. Rabah J. and Fairweather N. *Israeli Military Orders in the Occupied Palestinian West Bank. 1967-1992*. (2nd. Ed. Jerusalem Media and Communications Centre. Jerusalem. 1995.).p1

⁸⁸⁴ In detail "3(a) All powers of government, legislation, appointment, and administration in relation to the area or its inhabitants shall henceforth vest in me alone and shall be exercised by me or by whomsoever shall be appointed by me in that behalf or act on my behalf. (b) Without derogating from the generality of the foregoing it is hereby provided that any duty to consult, obtain consent and the like, prescribed in any law as a condition-precedent for legislation, enactment or appointment, or as a condition for the entry into force of any legislation or appointment - is hereby repealed." Cohen cites P.O.A. (Judea/Samaria) No.1 p3. english translation E/CN.4/1016/Add3.p5, amongst others. Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.). p93.

modifications as may result from the establishment I.D.F. Government in the Area."⁸⁸⁵

It is these Proclamations made by Israel and its establishment of an identifiable judicial system that allows the author to treat it as the State in the area and to ascribe a legitimacy to those acts of political violence used to enforce its laws in the West Bank which would otherwise constitute acts of terrorism.

Counter-Terrorist Legislation in the West Bank.

The basic criminal security code of the West Bank -which established the military courts, the legal procedure, administrative powers and defined the offences- was published as an annex to Proclamation No. 3. entitled 'The Order Concerning Security Regulations'⁸⁸⁶ (or O.C.S.R.). The O.C.S.R. determined that security legislation was placed within a hierarchy depending upon the rank of its maker. The commander of the Israel Defence Forces in the region was empowered to enact primary legislation whilst other army commanders could issue secondary enactments. It also provided that security enactments superseded any law effective in the region on the eve of the occupation, even if they were not specifically annulled by the former (or other) legislation⁸⁸⁷. In detail the O.S.C.R. contained 74 articles⁸⁸⁸ which re-enacted legislation similar to the Mandatory Emergency Regulations. According to Cohen the alterations to the O.S.C.R. in 1970 were implemented in an

⁸⁸⁵ Yahav cites Collection of Proclamations, Orders and Appointments (Judea and of Samaria), 1967. p3. Yahav D. (ed.). *Israel, The 'Intifada' and the Rule of Law*. (Israel Ministry of Defense. Tel Aviv. 1993.). p51.

⁸⁸⁶ Also translated as Security Instructions or Provisions. Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.). p94.

⁸⁸⁷ Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.). p94.

⁸⁸⁸ Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.). p94. Like Cohen this author uses the translation of the O.S.C.R. relating to the Golan Heights region rather than the West Bank, as provided by the United Nations in Report of the Special Working Group of Experts Established Under Resolution 6 (XXV) of the Commission on Human Rights. UN/E/CN.4/1016/Add.3. On page 8 the U.N. Committee noted "It seems that identical or similar security instructions were issued for the other occupied territories".

attempt to adapt these laws to the requirements of the Geneva Conventions⁸⁸⁹. This is ironic in that Article 35 of the previous O.C.S.R. (of 1967) had already stated:

"A military court and the administration of a military court will respect the provisions of the Fourth Geneva Convention of 12 August 1949 concerning the Protection of the Civilian Population in Time of War in all matters concerning court procedure and in case of conflict between this order and the said Convention, the provisions of the Convention are superior"⁸⁹⁰.

This was replaced by an unrelated section in October by Military Order No. 144 'Amendment No.9 to the Security Provisions Order'⁸⁹¹ and Israel continues to deny the applicability of the Fourth Geneva Convention to the West Bank. Subsequent legislation deemed essential to the maintenance of proper administration and security by the Military Commander of the West Bank was usually (although not always) issued in the form of proclamations and orders⁸⁹². These are published in the

⁸⁸⁹ Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.). p94.

⁸⁹⁰ Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.). p79. She cites the translation taken from U.N. document E/CN.4/1016. She goes on to claim that this section "proclaims the supremacy of the Fourth Geneva Convention over occupant's own security legislation, served in certain cases as a vehicle by which the military courts in the occupied territories could criticise the acts and legislation of the occupant" Citing RM/144/68, *Military Prosecutor v Bakhis*, 1 *Selected Judgements*. Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.). p79-80. Qupity gives a slightly different translation the relevant expression being "with respect to judicial procedures". Qupity M. 'The Application of International Law in the Occupied Territories as Reflected in the Judgement of the high Court of Justice in Israel' in Playfair E. (ed.). *International Law and the Administration of Occupied Territories: Two Decades of Israeli Occupation of the West Bank and Gaza Strip*. (Clarendon. Oxford.1992.).pp87-125. p119. As does the J.M.C.C., the relevant expression being "regarding all matters relating to judicial procedure". Rabah J. and Fairweather N. *Israeli Military Orders in the Occupied Palestinian West Bank. 1967-1992*. (2nd. Ed. Jerusalem Media and Communications Centre. Jerusalem. 1995.). p1.

⁸⁹¹ Qupity M. 'The Application of International Law in the Occupied Territories as Reflected in the Judgement of the High Court of Justice in Israel' in Playfair E. (ed.). *International Law and the Administration of Occupied Territories: Two Decades of Israeli Occupation of the West Bank and Gaza Strip*. (Clarendon. Oxford.1992.). pp87-125. p119. The J.M.C.C. date it as the 22 October. Also Rabah J. and Fairweather N. *Israeli Military Orders in the Occupied Palestinian West Bank. 1967-1992*. (2nd. Ed. Jerusalem Media and Communications Centre. Jerusalem. 1995.). p21.

⁸⁹² The editor of the Yearbook added the following footnote, "Military Orders are not published by the Israeli occupying authorities in an Official Gazette, or in daily papers or in any other easily available form. They are generally distributed on a limited scale. Few lawyers have difficulty in obtaining old copies of Orders. Amendments to earlier Orders are rather confusing because of the lack of availability of original Orders and

official gazette for each region in Hebrew and Arabic entitled *Proclamations, Orders and Appointments* ⁸⁹³. The legality of some of the resulting military orders has been questioned on various grounds. The first is that they breached a particular provision of the Hague Regulations by which Israel has justified its rule in the West Bank. That is Article 43 which specified that:

"The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, respecting, unless absolutely prevented, the laws in force in the country".⁸⁹⁴

The second is that some of these orders contravene provisions of the Geneva Conventions.

In addition to such orders the Israel authorities have attempted to counter-terrorism in the West Bank through the use of the Defence (Emergency) Regulations. Israel has claimed that this was in line with Article 2 of Proclamation No.2 which stated that the "law which existed in the area on 7 June, 1967 shall remain in force..."⁸⁹⁵. Probably the strongest evidence supporting this view is the claim that Jordan used the D.E.R. against residents of the area⁸⁹⁶, although this has been questioned by Palestinian groups and the Jordanian government itself⁸⁹⁷. Like some of the military orders the legality of the Regulations

the scarcity of earlier amendments". Kuttab J. 'Legislation. Military Orders'. *Palestine Yearbook of International Law*. Vol. 1. 1984. pp175-6.

⁸⁹³ Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.). p94.

⁸⁹⁴ Roberts and Guelff note that the French text uses the term "l'ordre et la vie publique" instead of "public order and safety" Roberts A. and Guelff R.(eds.). *Documents on the Laws of War*. (2nd. ed. Clarendon Press. Oxford. 1989.). p56.

⁸⁹⁵ Yahav cites *Collection of Proclamations, Orders and Appointments* (Judea and of Samaria), 1967. p3. Yahav D. (ed.). *Israel, The 'Intifada' and the Rule of Law*. (Israel Ministry of Defense. Tel Aviv. 1993.). p51.

⁸⁹⁶ Cohen cites Kutner T.S. 'Israel and the West Bank: Aspects of the law of belligerent occupation' *Israel Yearbook of Human Rights*. Vol.7. 1977. pp166-221. p224-5. Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.). p96.

⁸⁹⁷ Moffett for example wrote "during the course of the 19 years of Jordanian rule over the West Bank, the British Defence Regulations were never used by the Jordanian Government. This fact has been confirmed by a number of sources, including interviews with Palestinian lawyers who practiced in the West Bank during the period of Jordanian rule, and with officials of the Jordanian Ministries of Justice and Foreign Affairs". Moffett M.R. *Perpetual Emergency: A Legal Analysis of Israel's Use of the British*

have been questioned. The legality of the D.E.R has been challenged on the grounds that they were no longer in force on the day in question⁸⁹⁸, due to the issuing of the Palestinian (Revocations) Order in Council⁸⁹⁹ which came into force at midnight of 13/14 May 1948, and/or their repeal by virtue of the 'Addendum to Trans-Jordan Defence Law of 1935' and the Proclamation of the Jordanian Military Commander in May 1948, as Jordan took over the region known as the West Bank⁹⁰⁰.

Despite its insistence that the D.E.R. were in force in the region when they took it over from the Jordanians in 1967, the Israeli Military Government in the area introduced two other legislative orders to remove any doubts concerning the validity of the D.E.R. The first of these was the "Order Concerning Interpretation (Further Provisions) (No. 10 (Judea and Samaria) (No.160). 1967'. Article 2 of this order

Defence (Emergency) Regulations, 1945, in the Occupied Territories. (Al-Haq. Ramallah. 1989.). p16. For name of interviewees cited by Moffett see footnote 44 p54.

⁸⁹⁸ According to Yahav, Jordan took the view at the U.N. that the D.E.R was not in force in June 1967. He cites Report of the U.N. Special Committee to examine the practice of the Israeli authorities affecting human rights of the population of the territories. (U.N. Doc. A/8089 (1970). Yahav D. (ed.). *Israel, The "Intifada" and the Rule of Law.* (Israel Ministry of Defense. Tel Aviv. 1993.). p51. Israel claimed that because of their power under the Palestine Defence Orders in Council 1937 to override any other acts of legislation they could only be repealed or amended explicitly, which the Trans-Jordan Defence Law had failed to do. Yahav D. (ed.). *Israel, The "Intifada" and the Rule of Law.* (Israel Ministry of Defense. Tel Aviv. 1993.). p52. According to Cohen, Israel claims that they were incorporated *via* Jordan's 'The Law of Modification of Administrative Procedures' effective 1 December 1949 amongst other legislation Cohen E. *Human Rights in the Israeli Occupied Territories.* (Manchester University Press.Manchester. 1985.). p94. Dov-shefi claims that the provisions of the D.E.R. and the Trans-Jordan Defence Law do not clash. For this and other reasons why the D.E.R. are valid see, Dov-Shefi T. 'The Reports of the U.N. Special Committees on Israeli Practices in the Territories-A Survey and Evaluation' in Shamgar M. (ed.). *Military Government in the Territories Administered by Israel 1967-1980.* (Alpha Press. Jerusalem. 1982.). pp285-334.

⁸⁹⁹ The Palestinian (Revocations) Order in Council revoked the D.E.R. which was originally made in terms of the Pales Provisions) No. 3. The West Bank Area No. 187. 1967' of 17 December 1967. Yahav D. (ed.). *Israel, The "Intifada" and the Rule of Law.* (Israel Ministry of Defense. Tel Aviv. 1993.).

?? Alon wrote "Palestinian terrorism increased greatly after the Six Day war. In fact, it was the Arab defeat in the 1967 War that boosted terrorism". Alon H. *Countering Palestinian Terrorism in Israel. Towards a Policy Analysis of Countermeasures.* (Rand. Santa Monica. August 1980.). p41. She also notes that on 20 June 1967 Al-Fatah announced it was moving its headquauae where that is inconsistent with any provisions of the Defence of TransJordan Law of 1935, or with any regulations or Orders issued there under'. The claim to incompatibility is based upon the fact that the Jordanian Defence Laws and Regulations also provide for administrative detention, deportation and house demolitions, albeit *via* a Jordanian procedure. Moffett M.R. *Perpetual Emergency: A Legal Analysis of Israel's Use of the British Defence (Emergency) Regulations, 1945, in the Occupied Territories.* (Al-Haq. Ramallah. 1989.). p8-10, 15-16.

decreed that "hidden law does not possess and never has possessed any validity"⁹⁰¹. Whilst article 1 had defined "A Hidden law" as:

"Any act of legislation purported to have been enacted in the Area during the period between 29 November 1947 and 15 May 1948 which was not published in the *Palestine Gazette* although it was of a type of legislative acts the publication of which in the *Palestine Gazette*, was prior to that period, mandatory or customary"⁹⁰².

The effect of this piece of legislation was similar to that of Article 11A of the Law and Administration Ordinance 1948 in Israel⁹⁰³, in that it legalised the D.E.R which may otherwise have been invalidated by the passing of the Palestine (Revocations) Order in council which had been signed in London of 12 May 1948 but never made it into the Palestine Gazette⁹⁰⁴.

The second order enacted to clarify matters was 'The Order Concerning Interpretation (Further Provisions) (No.5). (Judea and Samaria) (No.224)' of 1968. It too was introduced "in order to remove any doubt"⁹⁰⁵ that the D.E.R. was not applicable to the West Bank, following claims made in court⁹⁰⁶ that the D.E.R. had been implicitly repealed by other legislation introduced into the West Bank in between the rule of the British and Israel, notably the 'Jordanian Constitution of 1952' and the 'Trans-Jordan Defence Law, 1935'⁹⁰⁷. Article 3 of Israeli Order

⁹⁰¹ Yahav D. (ed.). *Israel, The 'Intifada' and the Rule of Law*. (Israel Ministry of Defense. Tel Aviv. 1993.). p51. The J.M.C.C. date it as 5 November 1967. Rabah J. and Fairweather N. *Israeli Military Orders in the Occupied Palestinian West Bank. 1967-1992*. (2nd. Ed. Jerusalem Media and Communications Centre. Jerusalem. 1995.). p23.

⁹⁰² Yahav D. (ed.). *Israel, The 'Intifada' and the Rule of Law*. (Israel Ministry of Defense. Tel Aviv. 1993.). p51.

⁹⁰³ More precisely he implies that they would have been. Yahav D. (ed.). *Israel, The 'Intifada' and the Rule of Law*. (Israel Ministry of Defense. Tel Aviv. 1993.). p52.

⁹⁰⁴ Yahav D. (ed.). *Israel, The 'Intifada' and the Rule of Law*. (Israel Ministry of Defense. Tel Aviv. 1993.). p52.

⁹⁰⁵ Yahav's term, although he has it in quotation marks as well. Yahav D. (ed.). *Israel, The 'Intifada' and the Rule of Law*. (Israel Ministry of Defense. Tel Aviv. 1993.). p53.

⁹⁰⁶ Yahav notes that these were raised by Arab lawyers but makes no further distinction. Yahav D. (ed.). *Israel, The 'Intifada' and the Rule of Law*. (Israel Ministry of Defense. Tel Aviv. 1993.).p52.

⁹⁰⁷ This the view of the Jordanian government. See Cohen who cites Shefi D. 'The protection of human rights in the areas administered by Israel: UN Findings and Reality' *Israel Yearbook of Human Rights* 3. 1973. pp337-361. p342. Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press.Manchester. 1985.). p94.

Concerning Interpretation (Further Provisions) (No.5). (Judea and Samaria) (No.224) of February 1968 stated:

"Emergency legislation which was in force in the area after 14 May, 1948 will continue in force from (7 June, 1967) and onward as though it were enacted as security legislation, unless explicitly repealed by citation of its name as mentioned in Article 2(b), prior to (7 June, 1967)"⁹⁰⁸.

Yet despite these military orders, the legality of particular parts of the D.E.R. have also been questioned on numerous occasions before Israel's High Court of Justice, which has taken it upon itself to review the actions of the Israeli authorities in the West Bank. The most relevant challenges were those concerning orders for the confiscation, demolition or sealing up of buildings⁹⁰⁹ issued under Regulation 119 of the D.E.R., and deportation orders issued under Regulation 112. The H.C.J. has in a long series of decisions concerning Article 119 held that the D.E.R. remained in force in Judea and Samaria throughout the period of Jordanian rule there⁹¹⁰. In the *Abu-Awad v the Military Commander of Judea and Samaria* case in 1979⁹¹¹ the H.C.J. took the view that the D.E.R. was in place at the time Jordan invaded, and that Jordan had absorbed the law via Article 128 of its 1952 constitution, which stated that the laws and regulations in force in the kingdom were to remain in force. Although it has been known for justices of the Supreme Court to express doubts as to whether Regulation 112 remained in force in the West Bank in light of Article 9(1) of the Jordanian Constitution which stated that "a Jordanian shall not be exiled from the territory of the

908 Yahav D. (ed.). *Israel, The 'Intifada' and the Rule of Law*. (Israel Ministry of Defense. Tel Aviv. 1993.).p.53. J.M.C.C. date it at 20 February 1968. Rabah J. and Fairweather N. *Israeli Military Orders in the Occupied Palestinian West Bank. 1967-1992*. (2nd. Ed. Jerusalem Media and Communications Centre. Jerusalem. 1995.). p30.

909 Yahav D. (ed.). *Israel, The 'Intifada' and the Rule of Law*. (Israel Ministry of Defense. Tel Aviv. 1993.). p53.

910 Yahav D. (ed.). *Israel, The 'Intifada' and the Rule of Law*. (Israel Ministry of Defense. Tel Aviv. 1993.). p54.

911 "We were not presented with any proof that the [British] Defence Regulations contradict the Jordanian defence Law of 1935, thus the conclusion is that at the time of the Jordanian occupation of the West Bank in 1948, the above regulations were valid". HC. 97/79. 33 (3) P.D. 309. Moffett M.R. *Perpetual Emergency: A Legal Analysis of Israel's Use of the British Defence (Emergency) Regulations, 1945, in the Occupied Territories*. (Al-Haq. Ramallah. 1989.). p10.

kingdom"⁹¹². Nevertheless in the 1980 *Kawasme* case Justice Landau issued the judgement that even if the said provisions had been cancelled by the Jordanian Constitution of 1952, -and that was doubted on the grounds that Article 128 of the Constitution stated that "all laws, regulations and other enactments in force in the Hashewite kingdom of Jordan at the time of entry into force of shall remain in force until abolished or amended by a law in accordance with this constitution"⁹¹³. it was reinstated by Order of the Israeli Military government⁹¹⁴. He therefore did not even attempt to decide whether or not the D.E.R. was in force in Jordan.⁹¹⁵

The second basis for disputing the legality of particular parts of the D.E.R. is their invalidation by other (international) legislation namely the Fourth Geneva Convention (or G.C.I.V.). It has been said that articles 53 and 49 of the G.C.I.V. prohibit (at least certain) demolitions and deportations. Although here it should be noted that Israel has taken the position that they are not applicable to the area of the West Bank for a number of stated reasons⁹¹⁶ and curiously the Israeli Supreme Court has on occasion noted that particular 'deportations' and 'demolitions' carried out by the I.D.F. with the West Bank do not breach these

⁹¹² Yahav mentions two justices within the second *Kawasme* case the Yahav D. (ed.). *Israel, The 'Intifada' and the Rule of Law*. (Israel Ministry of Defense. Tel Aviv. 1993.). p54.

⁹¹³ Section 128 Jordanian constitution of 1952, cited by Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.). p 95.

⁹¹⁴ Cohen cites *Kawasme* case of 1980 HC 698/80. 35 P.D.617, 622-6 Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.). p 95.

⁹¹⁵ Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.). p 95.

⁹¹⁶ See a very detailed and interesting paper by Bar-Yaacov N. 'The Applicability of the Laws of War to Judea and Samaria (The West Bank) and to the Gaza Strip' *Israeli Law Review*. Vol. 24. No.3-4. 1990. pp485-506. The official reason for the non-application of the G.C.I.V. can be summed up in three points. (a) Article 2 stipulates that the convention is to be applied to occupied territories captured from states which held sovereignty over those territories; (b) the territory of the West Bank was never under Jordanian sovereignty as it was an occupying power; (c) If Israel were to agree to the application of G.C.I.V it would be tantamount to Israeli recognition of Jordanian sovereignty over the West Bank. See Qupty M. 'The Application of International Law in the Occupied Territories as Reflected in the Judgement of the high Court of Justice in Israel' in Playfair E. (ed.). *International Law and the Administration of Occupied Territories: Two Decades of Israeli Occupation of the West Bank and Gaza Strip*. (Clarendon. Oxford.1992.).pp87-125. p101-102.

provisions of G.C.I.V.⁹¹⁷, even though it is not duty bound by Israeli law to consider the G.C.I.V.. (Israel claims that it will apply the humanitarian parts of the G.C.I.V. but does not name them). The issue of the applicability of the Geneva Conventions is potentially important to this thesis, because if it was applicable to the West Bank as many if not most authors claim, then Israel's counter-terrorist policies of 'deportation' and 'demolitions' (under the D.E.R.) *could* be illegal and could therefore qualify for the label of state terrorism according to this author's definition (if additional criteria were fulfilled).

However rather than get embroiled in a discussion over the applicability of this piece of international law to Israel's occupation of the West Bank- an issue which is complicated by the fact that the position of the Israeli government in international fora is different from that of Israel's H.C.J. and that expressed by various international bodies⁹¹⁸ - this author will clearly state whether he thinks the G.C.I.V. applies and the reasons for his decision. The importance of such a decision derives from the fact that this author's definition of state terrorism requires a decision of what is (il)legal according to the wording of Israeli law (which is not necessarily the same as (any 'political') decision of its courts⁹¹⁹).

⁹¹⁷ Quputy cites the H.C.J. the Abu-Awad case HC97/79,316 as saying that the G.C.I.V. "does not diminish the obligation of the administering power to tend to the preservation of public order in the administered area, in keeping with Article 43 of the Hague Convention of 1907, nor from its right to employ measures necessary for its own security". Quputy M. 'The Application of International Law in the Occupied Territories as Reflected in the Judgement of the High Court of Justice in Israel' in Playfair E. (ed.). *International Law and the Administration of Occupied Territories: Two Decades of Israeli Occupation of the West Bank and Gaza Strip*. (Clarendon. Oxford.1992.). pp87-125. p95. Quputy also summed up the H.C.J.'S view in the *Jaber* case in which the petitioner challenged the right to demolish a room in accordance with Article 119 of the D.E.R. . "According to this position of the Supreme Court, so long as there exists an internal law in the territories, the internal law outweighs the provisions of the Geneva Convention and the Hague Regulations as well, and in such instances there is no need to examine the activities of the military government in accordance with the standards established by international law". Quputy M. 'The Application of International Law in the Occupied Territories as Reflected in the Judgement of the High Court of Justice in Israel' in Playfair E. (ed.). *International Law and the Administration of Occupied Territories: Two Decades of Israeli Occupation of the West Bank and Gaza Strip*. (Clarendon. Oxford.1992.).pp87-125. p107. This he points out conflicts with the judgement in the *Qawassmeh* case where the court ruled that it was doubtful whether the D.E.R. were stil in force in the West Bank on the eve of the I.D.F.'s entry in light of Article 9(1) of the Jordanian Constitution of 1952. H.C.J. 698/80. 625.

⁹¹⁸ Such as the U.N. and the International Committee for the Red Cross.

⁹¹⁹ This should be distinguished from such interpretations of the courts that creates Israeli law, by setting precedents.

The position taken here is that the G.C.I.V. has not been legally binding on the actions of its security forces in the West Bank, since it replaced Article 35 of the O.S.C.R. in October of 1967, if then⁹²⁰. This is because the G.C.I.V. is an international treaty it has not been transformed into Israeli law. The same reasoning can also be used to show why other pieces of international law such as the I.C.C.P.R. and the C.A.T. which have been ratified by the Israeli parliament are not applicable to this analysis of Israel's counter terrorist activities in the West Bank, despite the fact that the signatories declare the provisions apply to any people in the area of jurisdiction⁹²¹. Here it should be noted that on this occasion the Israeli government and Supreme Court hold the same interpretation which is also that taken by this author.

To those who suggest that certain parts of the G.C.I.V. constitute Israeli law due to the fact that they merely codify existing international customary law, the author responds by saying that even if this were the case, the fact is that it is the wording of the municipal law which has precedence in Israeli law. This reasoning can also be used to refute other important claims. The first of these is that particular military orders introduced by the Israeli authorities in the West Bank are illegal, because they do not conform to the requirement of customary

⁹²⁰ Article 35 stated: "A military court and the administration of a military court will respect the provisions of the Fourth Geneva Convention of 12 August 1949 concerning the Protection of the Civilian Population in Time of War in all matters concerning court procedure and in case of conflict between this order and the said Convention, the provisions of the Convention are superior". Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.). p79. Perhaps this meant only the procedure of the court. Although Cohen claimed that this section "proclaims the supremacy of the Fourth Geneva Convention over occupant's own security legislation, served in certain cases as a vehicle by which the military courts in the occupied territories could criticise the acts and legislation of the occupant" Citing RM/144/68, *Military Prosecutor v Bakhis*, 1 *Selected Judgements*. Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.). p79-80.

⁹²¹ Article 2(1) of the I.C.C.P.R. declares that a state party undertakes to respect and ensure the rights provided by it "to all individuals within its territory and subject to its jurisdiction"; and article 2(1) of the C.A.T. declares that "each State Party shall take effective legislative, administrative, judicial measures to prevent acts of torture in any territory under its jurisdiction". Noted by Benvenisti E. 'The Applicability of Human Rights Conventions to Israel and to the Occupied Territories'. *Israeli Law Review*. Vol.26. (1) Winter 1992. pp24-35. p. 33 and 34. He goes on to claim that the fact that the phrase 'within the states jurisdiction' is tantamount to 'within its effective control' seems to be beyond doubt today, much due to the elucidation of this concept mainly by the European Court of Human Rights on its ruling on Turkish occupation of Northern Cyprus (May 1975)"p34.

international law contained within Article 43 of Hague Regulations which allows the occupying force to alter existing legislation only when absolutely necessary⁹²². Secondly this approach also helps bypass the potential problem created by Israeli government's claim that it will abide by its humanitarian provisions of the G.C.I.V. but will not name these provisions of customary international law.

Thus by simply answering the difficult question 'What is the law in place in the West Bank as set out in statute by Israel?', this author's definition avoids answering a series of even more complicated legal questions which surround the legality of Israel's occupation of the West Bank. Notably those which surround the influence of international law on Israel's occupation. All of the alternative definitions based upon international law are therefore far more complicated precisely because to they must attempt to work out the answers to a number of the following questions, relating to Israel's rule in the West Bank. Including:

- Are all Israel's laws in those parts of Israel not ascribed to the Jewish state in 1947 illegal?;
- Are all Israel's laws in the 'annexed' part of Jerusalem illegal?⁹²³;
- Are all of those laws which violate the G.C.I.V. illegal?. That is 'Does the wording of article 2 (2) of the G.C.I.V. mean that it does not apply to the West Bank?⁹²⁴; Does any of G.C.I.V. constitute international customary law, and if so which parts?⁹²⁵; Are the laws which Israel uses to

⁹²² "The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, respecting, unless absolutely prevented, the laws in force in the country".

⁹²³ This can be seen to spring from the fact that East Jerusalem was formally 'annexed' in accordance with Israeli law, but not international law with the passing of the new (Basic) law entitled 'Jerusalem The Capital of Israel' on 30th July 1980. For the debates surrounding this and the earlier change in the legal status of Jerusalem, see Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.). p38-43.

⁹²⁴ This is the basis of Israel's refusal to apply it. See Qupaty M. 'The Application of International Law in the Occupied Territories as Reflected in the Judgement of the high Court of Justice in Israel' in Playfair E. (ed.). *International Law and the Administration of Occupied Territories: Two Decades of Israeli Occupation of the West Bank and Gaza Strip*. (Clarendon. Oxford.1992.).pp87-125. p101-102. and Bar-Yaacov N. 'The Applicability of the Laws of War to Judea and Samaria (The West Bank) and to the Gaza Strip' *Israeli Law Review*. Vol. 24. No.3-4. 1990. pp485-506.

⁹²⁵ Judge Landau claimed that the Geneva Convention "does not constitute a part of customary international law" HC698/80. 627. Cited by Qupaty M. 'The Application of International Law in the Occupied Territories as Reflected in the Judgement of the high

authorise demolitions and deportations in accord with articles 53 and 49 of the G.C.I.V. these as the Israeli H.C.J. claims?⁹²⁶.

- Does any of the legislation introduced by Israel into the West Bank breach Article 43 of the Hague Regulations?⁹²⁷

- Do the laws which Israel use to authorise demolitions in the West Bank violate Article 23 (g) of the Hague Regulations?⁹²⁸.

- Do the Nuremberg Principles constitute international law? and if so do they outlaw the type of deportations made by Israel?, or its use of 'moderate physical pressure'⁹²⁹

- If the Israeli occupation is based on international law should not other pieces of international law also apply to the region?⁹³⁰.

Court of Justice in Israel' in Playfair E. (ed.). *International Law and the Administration of Occupied Territories: Two Decades of Israeli Occupation of the West Bank and Gaza Strip*. (Clarendon. Oxford.1992.).pp87-125. p109. He also cites other authors who believe that it does constitute customary international law, including Pictet J. *Commentary on the Geneva Convention IV of 1949* (Geneva. 1958) p9; Yingling R.T. and Ginnane R.W. 'The Geneva Conventions of 1949'. *American Journal of International Law*. Vol. 46. (3) 1952. p393, 411. Qudus M. 'The Application of International Law in the Occupied Territories as Reflected in the Judgement of the high Court of Justice in Israel' in Playfair E. (ed.). *International Law and the Administration of Occupied Territories: Two Decades of Israeli Occupation of the West Bank and Gaza Strip*. (Clarendon. Oxford.1992.).pp87-125. p111.

⁹²⁶ In the *Abu Awad* case the H.C.J. established that Article 49(1) was intended to prevent mass deportations as perpetrated by the Nazi Germans not those of individuals. See Qudus M. 'The Application of International Law in the Occupied Territories as Reflected in the Judgement of the high Court of Justice in Israel' in Playfair E. (ed.). *International Law and the Administration of Occupied Territories: Two Decades of Israeli Occupation of the West Bank and Gaza Strip*. (Clarendon. Oxford.1992.). pp87-125. p110. Article 53 of the G.C.I.V. prohibits the destruction of property "except where such destruction is rendered absolutely necessary by military operations". As quoted by Welchman L. *Israel's Demolition and Sealing of Houses in the Occupied Palestinian Territories*. (Al-Haq. Ramallah. 1993. Occasional Paper No.11.). p22.

⁹²⁷ Article 43 specified that: "[t]he authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, respecting, unless absolutely prevented, the laws in force in the country". Roberts and Guelff note that the French text uses the term "l'ordre et la vie publique" instead of "public order and safety" Roberts A. and Guelff R.(eds.). *Documents on the Laws of War*. (2nd. ed. Clarendon Press. Oxford. 1989.). p56.

⁹²⁸ Article 23 (g) of the Hague Regulations declares; "It is especially forbidden ...(g) To destroy or seize the enemy's property, unless such destruction, or seizure be imperatively demanded by the necessities of war".

⁹²⁹ Article 6(b) of the Nuremberg Principles declared "deportation to slave labour or for any other purpose of civilian population of or in occupied territory" as a "war crime", it also declares that "ill-treatment" of civilians of an occupied region as such. Alternatively torture may be covered by article 6(c) which puts "other inhumane acts committed against any civilian population" under the title Crime against Humanity.

⁹³⁰ This is essentially derived from the view that if the role of the military commander in the region was established by the international laws of war why then are the rest of the international laws of war not applied.

At the end of this examination of the constitutional and legal basis of Israel's counter-terrorist laws it is possible to identify those pieces of legislation by which Israel attempts to counter those actions which it terms 'terrorism' both within Israel (i.e. that established in 1949 and Jerusalem) and the (rest of the) West Bank. As can be seen from this examination, the law that is primarily used to counter-terrorism within Israel during the period 1967-1994 in addition to the Criminal Code of 1936 which was replaced in 1977 by the Penal Code, are the 'Defence (Emergency) Regulations' which was replaced in 1980 by the 'Emergency Powers (Detention) Law 1979' and the 'Prevention of Terrorism Ordinance 1948'.

Whilst within the West Bank the Israeli authorities use the British made D.E.R. and 'Criminal Code', and since 1977 the Israeli 'Penal Code', and 'The Order Concerning Security Regulations' and the military orders that derive from it to counter terrorism by non-Israelis. In addition whilst these laws can be used against both Arabs and Jewish settlers in the West Bank, in practice the likelihood is that Israeli's suspected of similar terrorist offences will be dealt with under the 'Prevention of Terrorism Ordinance' and since 1980 'the 'Emergency Powers (Detention) Law' which are not otherwise enforceable within the West Bank.

However an examination of all of the actions undertaken by the Israelis in accord with the legislation mentioned above would still be far too large for a thesis. So instead of attempting to examine all of the counter-terrorist actions undertaken by Israeli forces within these two areas, this thesis will concentrate only on a number of them. In detail these are the powers to arrest terrorist suspects; the use of physical force against those suspected of terrorism-be it in order to interrogate, institute an arrest or to defend oneself; the deportation of suspected and convicted terrorists; the confiscation, sealing or demolitions of their property or that from which the attack was launched, the administrative detention of suspected terrorists, and the imposition of curfews. In concentrating on these themes, this thesis echoes the view taken William O'Brien in his legal analysis of 'Israel's War with the P.L.O.'. He wrote:

"Since this book is primarily concerned with issues of recourse to armed force, several controversial Israeli measures of great importance will not be discussed: modification of existing governmental systems, acquisition of land, water rights and restrictions on travel and correspondence, establishment of Jewish settlements in the Occupied Territories, as well as economic coercive measures"⁹³¹

In addition, it is precisely these policies which have also been the focus of attention by organisations which attempt to monitor abuses of human rights⁹³² (which other authors equate with state terrorism⁹³³); and moreover, each activity on the list has been identified as an example of state terrorism. For example in relation to Israeli actions within the areas it administered a Palestine Liberation Organisation document declared that:

"The illegal acts of terror that have been perpetrated by Israel and condemned by the world community for over 25 years include the following: arbitrary arrest and detention; ill-treatment and torture of prisoners; destruction and demolition of villages, town quarters, and houses; confiscation and expropriation of property;and indiscriminate killings"⁹³⁴

⁹³¹ O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p218.

⁹³² For example all are mentioned within Al-Haq's *Punishing The Nation: Human Rights Violations During the Palestinian Uprising. Dec.1987-Dec.1988*. (South End Press. Boston. 1990.).

⁹³³ Indeed one third (40/120) of those academics replying to this authors questionnaire indicated that 'human rights abuses' constitute state terrorism (without qualification). Jackie Smith claimed that human rights violations "can be considered terrorist acts if used systematically to alter the behaviour of a political challenger", J.Smith in reply to question 7, and G. Bowen wrote in reply to question 9. that "When the definition of legal acts contravenes broadly recognized international standards of human rights , then and only then are legal acts also state terrorism". Also K. Jeffrey and Maxwell Taylor who after answering 'Yes' to the same question 9 wrote , 'Where the legal system does not generally protect human rights' and "Domestic laws can violate human rights" respectively. See also Terry J.P. 'State Terrorism: A Judicial Examination in Terms of Existing International Law'. *Journal of Palestine Studies*. Vol. 10 (1). 1980. pp94-117. p95. Paust J.J. 'An Introduction to and Commentary on Terrorism and The Law' *Connecticut Law Review* Vol. 19(40 Summer 1987. pp679-. Certain pages sent by Paust with his reply to this author's questionnaire. p733.

⁹³⁴ Palestine Liberation Organisation. (Department of Information and National Guidance). *Crime and No Punishment*. (PLO. Beirut. 1974.). p5. For others who describe many if not all of these themes, as terrorism see Hadaw S. *The Palestinian: Victim of Conspiracy*. (Arab Palestine Association. Toronto. 1981.). p4 and Free Palestine. 'Who are the Terrorists?. The Zionists Record'. Part 7 in Free Palestine. *Palestine Information Kit*. London. August 28. 1975. p10-11.

Whilst another Palestinian source noted:

"The practice of terror has continued since the June War of 1967. Inside occupied territory, the Gaza Strip, for example, existed under a strict curfew for months as the Israelis tried to suppress Palestinian opposition between 1968 and 1972.....the destruction of houses is only one form of Israeli terror since the June War"⁹³⁵.

As for the actions of Israel abroad the same Palestinian source asserted that:

"Outside Palestine, Israel has also adopted terror methods, against Lebanon, Syria, Jordan and Egypt, and internationally. The attacks, by air, or by commando groups, against the Palestinian refugee camps in Lebanon, for example, are always described by Israeli sources as aimed at military targets, such as guerrilla bases. Over the past seven years of attacks against southern Lebanon, hundreds of Lebanese farmers, and Palestinian women and children have been killed or wounded in such raids. Villages have been destroyed, along with schools, health clinics, and UN Relief and Works Agency facilities.....Each of these acts is an example of terrorism undertaken by the official forces of the Israeli state"⁹³⁶.

This section will now go on to examine and assess the various policies by which Israel attempted to counter-terrorism within Israel and the West Bank before describing and analysing the counter-terrorist actions of Israel abroad.

⁹³⁵ Free Palestine. 'Who are the Terrorists?. The Zionists Record'. Part 7 in Free Palestine. *Palestine Information Kit*. London. August 28. 1975. p9 and p11.

⁹³⁶ Free Palestine. 'Who are the Terrorists?. The Zionists Record'. Part 7 in Free Palestine. *Palestine Information Kit*. London. August 28. 1975. p12-13.

Arrests.

There are many (security) offences which are eventually labelled 'acts of terrorism' by Israeli spokespersons. Because there are so many legal grounds by which a member of the Israeli security forces can arrest an individual for an offence which has been labelled in this way, this section deals only with those contained within the 'Prevention of Terrorism Ordinance' (or P.T.O.) and those contained within Articles 84 and 85 of the D.E.R. and Military Order 101. The reason for choosing legislation other than the P.T.O. is that the Ordinance is not generally enforceable within the West Bank region. The exception to the rule is the fact that the Israeli courts can, and have tried, Israelis who committed offences against the P.T.O. in the West Bank following the Knesset's enactment of the 'Emergency Regulations (Offences Committed in the Israel-held Areas-Jurisdiction and Legal Assistance) Law'⁹³⁷. As for the inclusion of these other pieces of legislation, these were chosen because they have been cited as evidence of the differential legal treatment between Jews and Arabs for essentially similar 'terrorist' offences⁹³⁸ and the extent of the reach of the Israeli legislation.

Published in the Official Gazette, No. 24 (29th September, 1948) the 'Prevention of Terrorism Ordinance' is the main specific piece of anti-terrorist legislation applicable to all inhabitants of Israel and to Israeli residents of the West Bank. Interestingly it was originally introduced to deal with Jewish terrorist groups following the killing of U.N. envoy Count Bernadotte by the Lechi (or Stern Gang)⁹³⁹. At the beginning of

⁹³⁷ Tsemel L. 'Double Standard Justice in Israel: The Case of the Jewish Terror Organization'. *Palestine Yearbook of Human Rights*. Vol. 2. 1985. pp37-68. p39. Article 2(a) of which stated that: 'A court in Israel shall be competent to try under Israel law any person who is in Israel for an act or omission which occurred in any region and which would constitute an offence if it had occurred in the area of jurisdiction of the courts of Israel'. See Tsemel for detailed examination of treatment of the Jewish Underground.

⁹³⁸ Tsemel L. 'Double Standard Justice in Israel: The Case of the Jewish Terror Organization'. *Palestine Yearbook of Human Rights*. Vol. 2. 1985. pp37-68.

⁹³⁹ Hofnung M. *Democracy, Law and National Security in Israel*. (Dartmouth.Aldershot. 1996.). p161. Strictly speaking The Emergency Regulations for the Prevention of Terrorism were passed on Sunday September 19, 1948 following the killing of the UN envoy on the Friday. The Lechi and the Hazit Hamolet were declared to be terrorist organizations and the Etzel were given an ultimatum to disband or face the same consequences, which they did. On 23 September 1948 the Provisional State Council convened and turned the Emergency Regulations for the Prevention of Terrorism into the permanent Prevention of Terrorism Ordinance. Hofnung M. *Democracy, Law and National Security in Israel*. (Dartmouth.Aldershot. 1996.). p162-3.

1950s the Ordinance was also used against the Jewish organisation known as the 'Zrifin Underground'⁹⁴⁰. After this, the P.T.O. was next applied in 1980 when various Palestinian groups were named, four years later it was used against the 'Jewish Underground'⁹⁴¹. In contrast to its use against Jewish organisations, Arab organisations can, and have been proscribed under Article 84 of the D.E.R., regardless of whether they were violent or encouraged such violence, although these were not the only two pieces of legislation which prohibit organisations⁹⁴². In the 1980's the Israeli's introduced alterations to the P.T.O. to deter support for and meetings with particular Palestinian groups which up until that time had even been able to stand for local elections in the West Bank. The Military Order No. 101 was introduced into the West Bank on August 27 1967. It was extended by Military Order No. 938 in 1982, and Military Order 1079 on October 1979, although the latter was not published until early 1984⁹⁴³.

The Prevention of Terrorism Ordinance.

The Legalities.

Section 3 of the P.T.O. makes membership of a terrorist organization a criminal offence liable to five years imprisonment. In addition to the fact that Section 1 generally interpreted a terrorist organisation as: "a body of persons resorting in its activities to acts of violence calculated to cause death or injury to a person or to threats of such acts of violence", the P.T.O. contained more specific articles on the matter. Proof of the existence of a terrorist organisation was contained within Section 7. It stated that:

⁹⁴⁰ Hofnung M. *Democracy, Law and National Security in Israel*. (Dartmouth.Aldershot. 1996.). p164-5, 172

⁹⁴¹ Tsemel L. 'Double Standard Justice in Israel: The Case of the Jewish Terror Organization'. *Palestine Yearbook of International Law*. Vol. 2. 1985. pp37-68. p38.

⁹⁴² Hofnung notes that five statutes deal with prohibited associations, in addition to the P.T.O. and D.E.R., the Penal Law, the Nonprofit Societies Law (1980) and the Parties Law (1992). Hofnung M. *Democracy, Law and National Security in Israel*. (Dartmouth.Aldershot. 1996.). p160. Kretzmer also notes that prior to the Penal Law the Criminal Code of 1936 also contained a provision outlawing "unlawful association". Kretzmer D. 'National Security and draconian law'. *The Jerusalem Post*. 1 July. 1988. pp10-11. p10

⁹⁴³ Kuttat J. 'Legislation. Military Orders'. *Palestine Yearbook of International Law*. Vol. 1. 1984. pp175-6.

"In order to prove, in any legal proceeding, that a particular body of persons is a terrorist organisation, it shall be sufficient to prove that-

(a) one or more of its members, on behalf or by order of that body of persons, at any time after the 5th Iyar, 5708 (14th May, 1948), committed acts of violence calculated to cause death or injury to a person or made threats of such acts of violence.

(b) the body of persons, or one or more of its members on its behalf or by its order, has or have declared that that body of persons is responsible for acts of violence calculated to cause death or injury to a person or for threats of such acts of violence, or has or have declared that that body of persons has been involved in such acts of violence or threats, provided that the acts of violence or threats were committed or made after the 5th Iyar, 5708 (14th May, 1948)."

Section 8 also enabled the Government to identify and proscribe specific organisations. It stated:

"If the Government, by notice in the Official Gazette, declares that a particular body of persons is a terrorist organisation, the notice shall serve, in any legal proceeding, as proof that that body of persons is a terrorist organisation, unless the contrary is proved."

Individuals could also be identified as members of a terrorist organisation in a number of ways. Section 9(c) stated that a person was deemed to be a member of such a terrorist organisation if they were found in a place that is used by the organisation for meetings or storage unless one can prove that the circumstances do not justify this conclusion. Whilst Section 1 interpreted the phrase "member of a terrorist organisation" to mean:

"a person belonging to it and includes a person participating in its activities, publishing propaganda in favour of a terrorist organisation or its activities or aims, or collecting moneys or articles for the benefit of a terrorist organisation or activities."

Similar offences were described elsewhere within the act. Section 2 for example made it an offence punishable by up to twenty years to perform:

"a function in the management or instruction of a terrorist organisation or participating in the deliberations or the framing of the decisions of a terrorist organisation or acting as a member of tribunal of a terrorist organisation or delivering a propaganda speech a public meeting or over the wireless on behalf of a terrorist organisation".

Whilst Section 4 made it an offence liable to three years imprisonment "to support" a terrorist organisation by one of the following means:

"(a) publishes, in writing or orally, words of praise, sympathy or encouragement for acts of violence calculated to cause death or injury to a person or for threats of such acts of violence; or

(b) publishes, in writing or orally, words of praise or sympathy for or an appeal for aid or support of a terrorist organisation; or

(c) has propaganda material in his possession on behalf of a terrorist organisation; or

(d) gives money or money's worth for the benefit of a terrorist organisation; or

(e) puts a place at the disposal of anyone in order that that place may serve a terrorist organisation or its members, regularly or on one particular occasion, as a place of action, meeting, propaganda or storage; or

(f) puts an article at the disposal of anyone in order that that article may serve a terrorist organisation or a member of a terrorist organisation in carrying out an act on behalf of the terrorist organisation."

Sections 5 and 6 enabled the State to confiscate or close down any property belonging to the terrorist.

The list of specific offences contained within Section 4 was extended by the Prevention of Terrorism Ordinance (Amendment) Law 1980. It made it an offence to do:

"any act manifesting identification or sympathy with a terrorist organisation in a public place or in such manner that persons in a public place can see or hear such manifestation of identification or sympathy, either by flying a flag or displaying a

symbol or slogan or by causing an anthem or slogan to be heard, or any other similar overt act clearly manifesting such identification or sympathy as aforesaid".

Two months later the ordinance was amended and for the first time since 1953 the Israeli's declared certain organizations to be terrorist groups, all 14 of which were Palestinian⁹⁴⁴. Hofnung suggests that the effect of the Ordinance, which covered only Israel or Israelis in the West Bank, "was more declaratory than real", for even before the amendment individuals who identified with terrorist organisations could be prosecuted under the provisions of the Penal Law which deals with crimes of insurrection⁹⁴⁵.

In addition from 13 August 1986 (until its repeal on 27 January 1993) the list of specific offences contained within Section 4 was extended by another Prevention of Terrorism Ordinance (Amendment) Law 1986⁹⁴⁶. It made it an offence for an Israeli citizen or resident "knowingly and without lawful authority", to make contact with a person representing or "occupying a position in the directorship, council or other organ" of a 'proscribed' terrorist organization unless they are a relative, or attending a press conference or academic meeting (provided it was not on an issue of policy).

⁹⁴⁴ Hofnung M. *Democracy, Law and National Security in Israel*. (Dartmouth.Aldershot. 1996.). p171. Citing Yalkut HaPirsumim, Government Notices (Y.P.) 1981. p105 (23.10.1980). He also notes that this notice was repealed in 1986 by which a new government proclamation by which 21 Palestinian and Lebanese organizations were declared terrorist organizations. Y.P. 1986. p1436. (27.2.1986). See also Y.P. 1991 p502 (15.11.1990), outlawing the Islamic Jihad organization. He also notes that provisions granting wide powers to the Minister of Defence, Chief of Staff and other army officers, were eliminated. Kretzmer noted that this included the P.L.O., *Fatah*, the P.F.L.P. and P.D.F.L.P. Kretzmer D. 'National Security and draconian law'. *The Jerusalem Post*. 1 July. 1988. pp10-11. p10.

⁹⁴⁵ Hofnung M. *Democracy, Law and National Security in Israel*. (Dartmouth.Aldershot. 1996.). p171. Kretzmer notes that under section 91b of the Penal Law, a "terrorist organization" is "an organization aiming at, or working for, the downfall of the state, or the impairment of its security or that of its inhabitants, or the infliction of harm on Jews in other countries". Whilst membership of an unlawful association was dealt with under Article 147. The difference was that under the latter the individual was liable to only one years imprisonment not five as under the P.T.O. Kretzmer D. 'National Security and draconian law'. *The Jerusalem Post*. 1 July. 1988. pp10-11. p10.

⁹⁴⁶ Section 4(h).

The Application of the Various Definitions of (State) Terrorism.

Because this is the first assessment it is useful to be reminded that in order to be labelled as an act of state terrorism by this author, an act must fulfill certain criteria set out within the definition. Firstly, it must involve the threat or use of violence. Secondly, the violence must be threatened or perpetrated by an organisation. Thirdly, the violence must be threatened or perpetrated for political rather than private motives. Fourthly, the act of violence must be intended to alter the behaviour of others wider than the immediate 'innocent' victims. The only exception that this author's definition allows for, is the State's threat or use of such politically motivated violence to uphold the law. However even then if the State's laws fail to give the individual victim of the State's violence the chance to avoid the infliction of such violence -that is when such violence is used to enforce laws which are either, retrospective in their effects; so vague as to be unavoidable; based on ascribed criteria, such as skin colour, which one could not possibly alter in order to avoid the laws' violence; or which have no intention of leading to trial where the victim could prove their innocence.'- then it too could qualify for the label of state terrorism if the other qualifying criteria are met.

As already noted in the earlier part of this analysis of Israel's counter-terrorist activities, all the various acts under scrutiny within this chapter were chosen because they involve the use or threat of violence. Secondly there seems little doubt that the Israeli defence forces, police and *Shin Bet* constitute either organisations in themselves, or form part of the organisation known as the State of Israel. Following this, one must ask 'are the arrests for offences under the P.T.O. politically motivated?'. The answer is 'yes', for even if one disputes that all laws are politically motivated and reflect political choices, then surely one would acknowledge that those used to counter (political) terrorism are. This is not only because it was an offence under Israel's counter-terrorist laws to fly the P.L.O. flag etc., but one would be claiming that the P.L.O. actions could not have been terrorist for they were not politically motivated. In line with these three answers the three questions "Does it involve the threat or use of violence?", "Is it carried

out by an organisation" and "Is it politically motivated?" will generally be down played in the remaining assessments to try and avoid unnecessary repetition.

Assuming that the arresting officer requires 'reasonable' suspicion of the various offences, then the use of violence to make arrests for practically all of the offences within the P.T.O. does not constitute state terrorism under this author's definition. This is because it was possible for the individual victim of the State's use of violence to know in advance what actions to avoid and to modify his or her behaviour accordingly.

So whilst, the proscription of terrorist groups by government decree (authorised by Section 8) may appear harsh from a civil liberties perspective and may, as Mathews claims, "violate all the requirements of the rule of law"⁹⁴⁷, it was possible for the individual victim of the State's use of violence to know in advance what actions to avoid and thus to refrain from joining any proscribed 'terrorist' group. As already noted the key here is the ability to avoid the act, so as long as the legal labelling of a group was made public, and the crime of membership was not retroactive, and those already existing members of an organisation which was not proscribed were given an opportunity to leave once the organisation was outlawed, then the State's use of violence in upholding this law would not fit this author's definition of terrorism.

In the case of the P.T.O. this latter problem could arise as a result of the fact that the act allows for the automatic proscription of groups in line with Section 7. It labels any group as a terrorist organisation once "one or more of its members...on behalf or by order of that body of persons", commits (or declares that it is responsible for) "acts of violence calculated to cause death or injury to a person or made threats of such acts of violence". This is unproblematic if those arrested are knowingly involved in such a terrorist group, but there must be a get out clause for those who did not know that the group was about to be involved in such terrorist activities. Without this, such victims will have had no way of avoiding the States use of violence. Section 9 does apparently provide a

⁹⁴⁷ "The banning process in Israel violates all the requirements of the rule of law" A.S. Mathews A.S. *Freedom State Security and the Rule of Law*. (Juta and Co. Cape Town, 1986.). p253.

get out clause. It states that if it is proved that a person was at any time a member of a terrorist organisation, that person shall be considered a member of that terrorist organisation "unless he proves that he has ceased to be a member of it".

It is also by this latter criterion that those offences contained within Sections 2, 4, 5 and 6 should also be judged, otherwise the individual who, was instructing, managing or presenting a speech on behalf of a group (Section 2); had their property confiscated or closed down (Section 6); or was incarcerated for publishing praise, sympathy or encouragement for such violence or groups; held their propaganda or giving or placing money or any other article for the use of a terrorist organisation; or gave money or money's worth for the benefit of a terrorist organisation, would have been an innocent victim of the State's use of violence (Section 4). Unfortunately a similar escape clause is not built-in to these sections therefore acts of State violence in support of these sections could constitute acts of terrorism on those occasions (if any) in which the victim of the State's violence could not avoid the State's violence.

The offences introduced between 13 August 1986 and its repeal on 27 January 1993 by the Prevention of Terrorism Ordinance (Amendment) also have such an escape route built in for the otherwise unwitting victim of the State's violence. The Prevention of Terrorism Ordinance (Amendment) Law allows those who would otherwise be guilty of breaking the law for having met or contacted terrorist organisations to avoid the States' use of violence in this way for it spells out the requirement by the use of the term "knowingly".

The other offences contained within The Prevention of Terrorism Ordinance (Amendment) Law successfully avoid this author's label. This is because the offences named in the new section 4 (g), are relatively unambiguous (mainly due to the fact that the word "clearly" is used to fence in the ambiguous potential of the last sentence). The new section 4(g) read:

"any act manifesting identification or sympathy with a terrorist organisation in a public place or in such manner that persons in a public place can see or hear such manifestation of identification or sympathy, either by flying a flag or

displaying a symbol or slogan or by causing an anthem or slogan to be heard or any other similar overt act clearly manifesting such identification or sympathy as aforesaid".

As for the other definitions, all of the offences within the P.T.O. fulfil the criteria demanded by the U.K.'s Prevention of Terrorism Act, for the State's use or threat of violence to uphold this piece of legislation would ultimately involve the use of politically motivated violence, in addition this was "for the purpose of putting any section of the public in fear" notably the victim!. Likewise all the offences fulfil the qualifying criteria demanded by Stohl and Lopez. That is, the State's use or threat of violence to uphold the different sections within this piece of legislation involve the purposeful act or threat of violence to create fear and/or compliant behaviour in a victim and /or audience of the act or threat'.

Similarly the threat of violence inherent in making arrests for all of the offences (with the exception of the confiscation of property) constitutes an act of terrorism in accordance with the Israeli derived definition, because the latter requires that the threats of violence are calculated to cause death or injury to a person. One could of course say that the arrest process is not implicitly intended to contain such violence but consistency would then demand that kidnappings carried out by insurgents would not qualify.

Such violence used to enforce the law does not however qualify for the label in accordance with either the American definition or that belonging to Schmid and Jongman's unless the Israeli forces arresting the offenders are undercover for only in this way do they constitute the clandestine or at least semi-clandestine forces required by these two definitions respectively. If however any arrests were carried out by the covert forces of the I.D.F. or the Israeli police or Border police, then such the threat of violence inherent within the arrest process would constitute an act of terrorism in accordance with the U.S. definition if one believed that such actions were preplanned (in that the law was already in place), and the victims were non-combatants.

As for Schmid and Jongman's definition it also requires "repeated" action, (which exists in all but the first arrest), "human victims" who "serve as message generators", but it is difficult to say that the main

target of such acts were elsewhere. The best one could say was that they were equally important. It is on this basis that arrests carried out by covert forces would not constitute acts of terrorism under Schmid and Jongman's definition.

Articles 84 and 85 of the D.E.R.

The Legalities.

Article 85(1), parts a-i, list various offences similar to those contained within the Prevention of Terrorism Ordinance. Despite this the punishments meted out were potentially far greater as part (i)(a) stated. One was liable on conviction by the Court of a Magistrate to imprisonment for one year or by a District Court to imprisonment for ten years for these offences. In detail these potential punishments were available for:

"Any person who -

- (a) is, or acts as, a member of an unlawful association, or
- (b) manages, or assists in the management of, an unlawful association, or holds any office or position in or under an unlawful association, or
- (c) does any work or performs any service for an unlawful association, unless he proves that he bona fide believed that the work or service was not for an unlawful association, or
- (d) attends any meeting of an unlawful association, or
- (e) permits or suffers any meeting of an unlawful association to be held in any house, building or place belonging to or occupied by him or under his control, unless he proves that he did not know of or connive at the meeting or that he bona fide believed that the meeting was not a meeting of an unlawful association, or
- (f) has in his possession, custody or control any book, account, periodical, handbill, poster, newspaper or other document, or any funds, insignia or property, belonging or relating to or issued by or in the interests of, or purporting to belong or relate to or to be issued by or in the interests of, an unlawful association, or
- (g) writes or otherwise prepares or produces, prints, types or otherwise reproduces, publishes, exhibits, sells or exposes for sale, distributes, transmits, or knowingly handles, any such thing as is mentioned in paragraph (f), or

(h) collects, receives, requests or demands any donation or subscription for an unlawful association or under pretence that it is for an unlawful association, or

(i) by writing, words, signs, or other acts or representation, directly or indirectly, whether by inference, suggestion, implication or otherwise, acts on behalf of, or as a representative of, an unlawful association"

As for the meaning of the key term "unlawful association", Article 84 defined it as "any body of persons, whether incorporated or unincorporated and by whatsoever name (if any)" which "(a)...advocates, incites or encourages any of the following unlawful acts". Namely; (i) "the overthrow by force or violence of the constitution" of, or the "Government of" Israel; (ii) "hatred or contempt of, or the exciting of disaffection against" the Government of Israel; (iii) "the destruction of or injury to property of" the Government of Israel; (iv) "acts of terrorism directed against servants of" the Government of Israel; "or which has committed or has claimed to have been responsible for, or to have been concerned in, any such acts as are mentioned in sub-paragraph (ii), (iii) or (iv)" or (b) "is declared by the" Israelis to be an unlawful association and included any branch, centre, committee, group, faction or institution of any such body.

The Application of the Various Definitions of (State) Terrorism.

Although the basis for proscription is different (it is both wider in that no violence need take place, and narrower in that the activities have to be anti-state) the results follow the same rationale. All of the offences listed in Section 84(i) -namely membership in (a), or management of (b), working for (c), attending meetings of (d), permitting a meeting of an unlawful association (e), possessing material relating to unlawful association, (f), writing for (g and i) or raising funds for (h), the acts of State violence used to enforce these prohibitions do not constitute acts of terrorism for the victims could easily have avoided these acts, as the definition of what constitutes an unlawful association is clear. Especially when in practice the Israeli's declare which are unlawful in line with Article 85(b). Therefore as so as long as the legal labelling of a group was made public, and the crime of membership was not

retroactive, and those already existing members of an organisation which was not proscribed were allowed to leave once the organisation was outlawed, then the State's use of violence in upholding this law would not fit this author's definition.

As for the other definitions, all of the offences within articles 84 and 85 fulfil the criteria demanded by the UK's Prevention of Terrorism Act, for the State's use or threat of violence to uphold this piece of legislation would ultimately involve the use of politically motivated violence "for the purpose of putting any section of the public in fear" notably the victim!. Likewise all the offences fulfil the qualifying criteria demanded by Stohl and Lopez. That is, the State's use or threat of violence to uphold the different sections within this piece of legislation involve the purposeful act or threat of violence to create fear and/or compliant behaviour in a victim and /or audience of the act or threat'.

Similarly the threat of violence inherent in the making arrests for all of the offences constitutes an act of terrorism in accordance with the Israeli derived definition, because the latter requires that the threats of violence are calculated to cause death or injury to a person.

Such violence used to enforce the law does not however qualify for the label in accordance with either the American definition or that belonging to Schmid and Jongman's unless the Israeli forces arresting the offenders are undercover for only in this way do they constitute the clandestine or at least semi-clandestine forces required by these two definitions respectively. If however any arrests were carried out by the covert forces of the I.D.F. or the Israeli police or Border police, then the threat of such violence inherent within the arrest process would constitute an act of terrorism if one believed that such actions were preplanned (in that the law was already in place), and the victims were non-combatants.

As for Schmid and Jongman's definition it also requires "repeated" action, (which exists in all but the first arrest), "human victims" who "serve as message generators", although it is difficult to say that the main target of such acts were elsewhere. The best one could say was that they were equally important. It is on this basis that arrests carried out

by covert forces would not constitute acts of terrorism under Schmid and Jongman's definition.

Military Order No. 101.

The Legalities.

As for Military Order No. 101 the 'Order Concerning the Prohibition of Incitement and adverse Propaganda (West Bank)', and its relating amendments. The key points are that Article 3 makes it an offence "to carry out any march or convene a meeting except with a permit issued by the Military Commander", whilst Article 10(a) also made it an offence to organize a march or meeting without a licence, or to call, instigate, encourage or participate in such a march or meeting.

Article 5 declared that: "It is forbidden to hold, raise, exhibit or attach any flags or political emblems except after obtaining a licence issued by the Military Commander". Whilst Article 6 also made it an offence:

"to print and publish in the area any publication, advertisement, proclamation, picture, pamphlet or any other document which contains any material with a political significance except after obtaining beforehand a licence from the Military commander..."

Other offences which like those noted above were liable to ten years imprisonment included, Article 7 (a) which outlawed attempts "whether verbally or in any other manner to influence public opinion in the Area in a manner which might endanger public security or order"; whilst 7(b) made it an offence to perform "any action" or obtain "any thing whatsoever with the intention of carrying out or of facilitating the attempt to carry out of any action mentioned " in 7(a).

An additional section (numbered 7A) was added by virtue of Military Order No. 938. in October 1981. It made it an offence to publish in "writing or verbally words of praise or encouragement or support for a hostile organization, its activities, or aims." (Article 7A a1). Whilst Article 7A a.2 made it an offence to carry out:

"any action likely to reveal or indicate leaning towards a hostile organization, its activities or aims, or to support it, such as by raising a flag, or displaying insignia and slogans, or by making heard a national anthem, or a symbol or any other visible activity proving or indicating such leaning or support as aforementioned, that being in a public place or in a place under conditions whereby the people gathered in that place can see or hear such activity as being supportive or encouraging [the hostile organization or unlawful association]"⁹⁴⁸.

The term "writing or verbally" was deleted by the amendment Military Order 1079 on October 1979.

The Application of the Various Definitions of (State) Terrorism.

Assuming that the arresting officer requires 'reasonable' suspicion of the various offences, then the use of violence to make arrests for practically all of the offences within the Military Order No. 101. do not constitute state terrorism under this author's definition of terrorism. Thus despite the fact that the Israeli made legislation takes the influence of the State deep into everyday life it was still possible for the individual victim of the State's use of violence to know in advance what actions to avoid and to modify his or her behaviour accordingly. This was true of Articles: 7A a.2 -which made it an offence to carry out: "any action likely to reveal or indicate leaning towards a hostile organization, its activities or aims, or to support it"; 5 -which forbade the exhibiting of any political emblems except after obtaining a licence issued by the Military Commander"; 10 and 3 -which made organizing, encouraging or carrying out a march or meeting without a licence an offence; and Article 6 which prohibited the publication of any document which contained any material with a political significance except after obtaining beforehand a licence from the Military commander.

⁹⁴⁸ Section 7A.b made it clear that the term hostile organization would have the same meaning as defined in the Order Concerning Training and contact with a hostile organization from Outside of the area (West Bank) (Order No. 284) 1968; or an illegal association as defined in Article 84 of the D.E.R..

More problematic was the existing Article 7 (a) which outlawed attempts "whether verbally or in any other manner to influence public opinion in the Area in a manner which might endanger public security or order"; whilst 7(b) made it an offence to perform "any action" or obtain "any thing whatsoever with the intention of carrying out or of facilitating the attempt to carry out of any action mentioned " in 7(a). in that the term "public security or order" is inherently vague unless a detailed explanation was provided. As this explanation is not apparent, any act of violence used to uphold this vague and therefore unavoidable law, is deemed potentially terrorist, and would qualify for this author's label if the other definitional requirements were met, which it does as any law aims to modify the behaviour of others.

As for the other definitions, all of the offences within Military Order No. 101 fulfil the criteria demanded by the UK's Prevention of Terrorism Act, for the State's use or threat of violence to uphold this piece of legislation would ultimately involve the use of politically motivated violence "for the purpose of putting any section of the public in fear" notably the victim!. Likewise all the offences fulfil the qualifying criteria demanded by Stohl and Lopez. That is, the State's use or threat of violence to uphold the different sections within this piece of legislation involve the purposeful act or threat of violence to create fear and/or compliant behaviour in a victim and /or audience of the act or threat'.

Similarly the threat of violence inherent in the making arrests for all of the offences contained in Military Order No. 101 constitutes an act of terrorism in accordance with the Israeli derived definition, because the latter requires that the threats of violence are calculated to cause death or injury to a person.

Such violence used to enforce the law does not however qualify for the label in accordance with either the American definition or that belonging to Schmid and Jongman's unless the Israeli forces arresting the offenders are undercover for only in this way do they constitute the clandestine or at least semi-clandestine forces required by these two definitions. If however any arrests were carried out by covert forces, then the threat of such violence inherent within the arrest process would constitute an act of terrorism if one believed that such actions

were preplanned (and some of them may have been), and the victims were non-combatants.

As for Schmid and Jongman's definition it also requires "repeated" action, (which exists in all but the first arrest), "human victims" who "serve as message generators", both of which existed but it is difficult to say that the main target of such acts were elsewhere. The best one could say was that they were equally important. It is on this basis that arrests carried out by covert forces would not constitute acts of terrorism under Schmid and Jongman's definition.

Shootings.

History.

In the attempt to counter-terrorism since 1967 hundreds of people⁹⁴⁹, mainly in the West Bank, have been shot dead by the Israeli security forces. These fatal shootings have involved a number of projectiles both lethal (that is 'live' ammunition), and 'non-lethal' (or 'less lethal') such as rubber bullets, plastic bullets, and CS gas. This latter fact encourages the use of sections to deal with each projectile, however because the laws that authorise the use of such force do not distinguish either between the weaponry, nor for the most part between its lethal and less lethal outcome, this section will examine only the use of deadly force caused by live ammunition in order to avoid unnecessary repetition. Incidentally the legal explanation is also of great relevance to the next section which is that on allegations of 'torture'.

The use of live ammunition by the I.D.F. has undoubtedly resulted in the lawful deaths (and wounding⁹⁵⁰) of many Palestinians. The fatal use of live ammunition can be attributed to two distinct types of forces connected to the state of Israel. The first are shootings by the overt members of the Israeli Police, Border Police and I.D.F.. The second which has occurred since the beginning of the *intifada*, involved specialist covert units of the I.D.F. (known in Hebrew as *Mista'arvim*)⁹⁵¹ and the Police. The vast majority of fatal shootings were by overt security forces occur in 'everyday' situations within the hostile and potentially dangerous environment of the West Bank. However since the revelations of the workings of undercover units going by the names

⁹⁴⁹ William O'Brien puts the number of Palestinians shot dead by Israeli security forces between December 1987 and May 1989 at 431. O'Brien W. *The Conduct of Just and Limited War*. (Praeger. New York. 1981.).p238 B'tselem put the number of Palestinians shot dead by Israeli security forces between the start of the *intifada* and May 1990 at 630, including 138 victims under the age of 16. B'Tselem. *The Use of Firearms by the Security Forces in the Occupied Territories*. (B'Tselem. Jerusalem. July 1990.). p4.

⁹⁵⁰ However the same organisation also reported that many of the injuries to Palestinian youths suggested that soldiers had shot intending to maim rather than to kill National Lawyers Guild. *Treatment of Palestinians in Israeli-Occupied West Bank and Gaza: Report of the National Lawyers Guild*. (National Lawyers Guild. New York.1988.). p22.

⁹⁵¹ B'Tselem. *Activity of the Undercover Units in the Occupied Territories* (B'Tselem. Jerusalem. May 1992.). p7.

of 'Shimshon' , 'Cherry' (I.D.F.) and 'Gideon' (Police) amongst others, it is the use of lethal force by covert units that has provided the most controversy. Their methods, targeting and the orders and guidelines by which they work have all come under criticism from human and civil rights groups and it is of no surprise then that they constitute much of the assessment⁹⁵². Other notorious uses of deadly force include the killings in the 1990s of 'wanted' or 'masked men', including those 'wanted' suspects hiding in surrounded buildings.

The Legalities.

In legitimising their use of *deadly* force whilst on duty, members of the Israeli security forces operating within both Israel and the West Bank can point to two possible justifications. The first was the claim that they were acting in 'self-defence' (which was until 1992 combined with the legal defence of 'necessity'), the second was to cite the defence of 'justification'. The latter could also be used to justify the use of *non-lethal* force up until 1992, when the legal defence of 'self-defence' was formally split from the 'defence of necessity', the latter of which could only be used to justify the use of non-lethal force.

The exact wording of self-defence has changed since 1967 when existing piece of enabling legislation -Section 18 of the Criminal Code 1936- read:

"An act or omission which would otherwise be an offence may be excused if the person accused can show that it was done or omitted to be done only in order to avoid consequences which could not otherwise be avoided, and which if they had followed would have inflicted grievous harm or injury to his person or to his honour or his property or to the person or honour of others whom he was bound to protect or to property placed in his charge:

Provided that in so acting he did no more than was reasonably necessary for that purpose, and that the harm inflicted by the act or omission was not disproportionate to the harm avoided."⁹⁵³

⁹⁵² See B'Tselem. *Activity of the Undercover Units in the Occupied Territories* (B'Tselem. Jerusalem. May 1992.). Middle East Watch. *A License to Kill. Israeli Operations Against "Wanted" and Masked Palestinians.* (Human Rights Watch. New York. 1993.).

⁹⁵³"A person is not criminally responsible for an act or omission if he does or omits to do the act under any of the following circumstances, that is to say:-

The Criminal Code of 1936 was replaced wholesale in 1977 by the Penal Law which enabled a member of the security forces to cite Section 22. It stated:

"A person may be exempted from criminal responsibility for an act or omission if he can show that it was only done or made in order to avoid consequences that could not otherwise be avoided and which would have inflicted grievous injury or harm to his person, honour or property, or to the person or honour of others whom he was bound to protect, or to the property placed in his charge:

Provided that he did no more than was reasonably necessary for that purpose, and that the harm caused by him was not disproportionate to the harm avoided."⁹⁵⁴

This in turn was altered on 18 March 1992⁹⁵⁵. Section 22 of the Penal Law (Amendment No. 37) declared that:

"A person shall not bear criminal responsibility for an act or an omission if he acted in the way that he did against an assailant in order to ward off an unlawful assault, which placed his own or another's life, liberty, person or property in danger of harm; however, a person shall not be deemed to be acting in self-defence if he brought about the said assault by his improper behaviour, while foreseeing the possible developments"⁹⁵⁶

Whilst Section 22(b) added that the 'defence of self-defence' could not be invoked "if in the circumstances of the case the act or omission were not reasonable in order to prevent harm"⁹⁵⁷.

(a) in execution of the law;

(b) in obedience to the order of a competent authority which he is bound by law to obey, unless the order is manifestly unlawful. Whether an order is or is not manifestly unlawful is a question of law". Section 19 'Justification'. The Criminal Code Bill 1936 Draft Ordinance The Palestine Gazette 25th September 1936. pp973-1066. p979.

⁹⁵⁴ A slightly different translation is cited by B'Tselem. *Activity of the Undercover Units in the Occupied Territories* (B'Tselem. Jerusalem. May 1992.). p23. They note that this also contained the rules on the 'defence of necessity'.

⁹⁵⁵ Date given by Stein Y. in interview with this author. B'Tselem, Jerusalem. May-June 1995.

⁹⁵⁶ B'Tselem. *Activity of the Undercover Units in the Occupied Territories* (B'Tselem. Jerusalem. May 1992.). p23. The law now differentiate between 'self-defence' and the 'defence of necessity' which is now contained in section 22(a).

⁹⁵⁷ B'Tselem. *Activity of the Undercover Units in the Occupied Territories* (B'Tselem. Jerusalem. May 1992.). p23.

These rules of self-defence emphasised the requirements of proportionality between the act committed in self-defence, and the harm that it sought to prevent, as well as between the requirement that the offender had no other way to prevent the danger, and the requirement that the act was no more than required to prevent the danger⁹⁵⁸.

The second legal means by which members of the security forces could attempt to defend their use of deadly force is known as the 'defence of justification'. This can be used by members of the Israeli security forces if they accidentally killed those whom they were attempting to arrest, that is in order to prevent their escape, or in executing the law, such as dispersing a riot. Section 19a of the Criminal Code Ordinance No.74 of 1936 legitimised such actions between 1967-1977. It stated that:

"A person is not criminally responsible for an act or omission if he does or omits to do an act

(a) in execution of the law;"

(b) in obedience to the order of a competent authority which he is bound to obey, unless the order is manifestly unlawful"

"Whether an order is or is not manifestly unlawful is a question of law"⁹⁵⁹.

In addition Section 12 of the Criminal Procedure (Arrests and Searches) Ordinance, 1924, established that: "If a person liable to arrest resists, or attempts to evade arrest, the person authorised to arrest him may use all reasonable means necessary to effect the arrest"⁹⁶⁰. However despite later amendments⁹⁶¹, it was Supreme Court Justice Agranat's ruling in

⁹⁵⁸ Also applied to the 'defence of necessity'. B'Tselem. *Activity of the Undercover Units in the Occupied Territories* (B'Tselem. Jerusalem. May 1992.). p24.

⁹⁵⁹ Section 19a of the Criminal Code Ordinance No.74 of 1936 p.g. Supp. 2, 1936 p285. Also Shacher who stated that "A person is not criminally responsible for an act or omission if he does or omits to do an act.... (a) in execution of the law;" Shachar Y. *The Use of Deadly Force in Enforcing the Law: Gold in the Light of History*. Israeli Law Review Vol 26 (3)1992. pp319-354 p321.

⁹⁶⁰ Also Arrest of Offenders and Searches Ordinance 1924, No 4 of 1924 , P.G. 1924 p462. Section 12 originally numbered 9. This section survived in original form in Criminal Procedure (arrests and searches) Ordinance, [New version} 1969, sec 19(2 L.S.I. [N.V.]30 , at 34)] Shachar Y. 'The Use of Deadly Force in Enforcing the Law: Gold in the Light of History. *Israeli Law Review*. Vol 26. (3) 1992. pp319-354. p322.

⁹⁶¹ Section 24 of the Penal Law exempts from criminal liability a person who committed an act "in executing the law' or in obeying an order given by a competent authority which he must obey by law "unless the order is manifestly illegal".

the *Gold v Attorney General* of 1953 that has been used as a benchmark in such cases⁹⁶². The ruling established that even in the absence of alternative means to effect a lawful arrest, deadly force could be employed only where the arrest was pursuant to the commission of a felony, i.e. a crime punishable by imprisonment of more than three years⁹⁶³ (this extra requirement however, has no practical effect on this analysis of 'terrorist' offences).

The legal situation changed on February 8, 1990 when in the case of *First Sgt. David Ankonina v. Chief Military Prosecutor*, Chief Justice Shamagar added limitations to the conditions permitting the use of force established in the *Gold* case. Instead of the mechanical formula which simply required the suspicion of a felony, basing his judgement on the notion of necessity contained within Section 22 of the Penal Law at the time⁹⁶⁴, Justice Shamagar laid down three prior and necessary conditions for the successful use of this defence by members of the security forces; the arrest must be legal and made in connection with a dangerous felony and that there was no other way to make the arrest⁹⁶⁵.

The requirement that the arrest was legal meant that a reasonable basis for suspicion was required, anchored in facts, in circumstances and in information, rather than mere guesswork⁹⁶⁶. The requirement that the attempted apprehension was for a dangerous felony, meant that members of the security forces could: "not use live fire unless the danger posed by the suspect was proportionate to the drastic character

962 Shachar Y. 'The Use of Deadly Force in Enforcing the Law: *Gold* in the Light of History. *Israeli Law Review*. Vol 26. (3) 1992. pp319-354. p319. Citing 7. P.D. 1126.

963 Shachar wrote "'A felony punishable by...imprisonment for more than three years" is a felony as defined by the Interpretation Law [Interpretation Law, 1981, sec. 3 (35.L.S.i.370): "This definition of felony has been in force since at least 1945"ftn 93]" , and not a serious felony. It was precisely of such a "felony" that Agranat J. spoke of in *Gold*". Shachar Y. 'The Use of Deadly Force in Enforcing the Law: *Gold* in the Light of History. *Israeli Law Review*. Vol 26. (3) 1992. pp319-354. p350.

964 B'Tselem. *Activity of the Undercover Units in the Occupied Territories* (B'Tselem. Jerusalem. May 1992.). p2.

965 B'Tselem. *Activity of the Undercover Units in the Occupied Territories* (B'Tselem. Jerusalem. May 1992.). p27.C.A.57/53 P.D. 7 1126.

966 B'Tselem. *Activity of the Undercover Units in the Occupied Territories* (B'Tselem. Jerusalem. May 1992.). p27. Citing the words of the court itself, although no reference was given.

of the measures taken"⁹⁶⁷. As for the requirement that there was no other way to effect the arrest, this condition dovetailed with the requirement that the attempted apprehension was for a dangerous felony. In other words in addition to requiring a reasonable proportion between the offence one was trying to prevent and the means taken toward that end, another condition was added, according to which lethal action was not taken unless it was essential to take it, because more moderate means have proved fruitless and the result could not be prevented in another way⁹⁶⁸. According to Justice Shamagar:

"The reasonableness of the means is determined according to the factual circumstances of each event, and in this respect, tested methods of operation, utilising stages, have been developed primarily in the relevant orders. The methods are, in the first place, a warning given by voice or by sign; second, expressing the intention to take more decisive action, including the use of firearms, this by means of firing warning shots in the air; and finally -and only finally- aimed fire, but even then in a manner calculated to reduce the degree of bodily harm"⁹⁶⁹.

Shamagar then noted that these limitations do not apply if "a grave immediate danger" was posed to the official or to the person he was protecting, although such a use of lethal means could then be justified in terms of the law on 'self-defence'⁹⁷⁰.

To help the security forces out with the complex legal situation, the I.D.F. and the police train their people and issue them with both oral instructions, orders and written rules of engagement (or R.O.E.). Although they vary slightly between the different parts of the security forces, and may change in response to incidents and political initiatives the I.D.F.'s rules of engagement in are according to Deputy Judge Advocate General, Col. David Yahav: "in accordance with Israeli

⁹⁶⁷ B'Tselem. *Activity of the Undercover Units in the Occupied Territories* (B'Tselem. Jerusalem. May 1992.). p29.

⁹⁶⁸ Justice Shamagar in the *Ankonina* case cited by B'Tselem. *Activity of the Undercover Units in the Occupied Territories* (B'Tselem. Jerusalem. May 1992.). p29-30. (No other reference given).

⁹⁶⁹ Justice Shamagar in the *Ankonina* case cited by B'Tselem. *Activity of the Undercover Units in the Occupied Territories* (B'Tselem. Jerusalem. May 1992.). p30. (No other reference given).

⁹⁷⁰ B'Tselem. *Activity of the Undercover Units in the Occupied Territories* (B'Tselem. Jerusalem. May 1992.). p30.

criminal law, with the rulings of the Supreme Court, and have been approved by the I.D.F. Judge Advocate General and the Attorney General's Office"⁹⁷¹.

The Application Of The Various Definitions Of (State) Terrorism.

Above and beyond the questions of political motivation, and the involvement of an organisation the key questions for this examination and assessment of shootings by state agents is, 'What was the intent of the perpetrator?' (just as it should be for those analysts studying insurgent groups), the identification of which helps one establish the legality of the action which is crucial to the application of my definition. Here it should be remembered that because of the potential problems of impartiality that surround the State's willingness to enforce its own laws against its own security personnel, this thesis does not merely look at the output of the legal system such as convictions in order to assess any action. Instead it concentrates on the input i.e. does the action fulfil the criteria. A process which takes us back to the issue of intent.

Yet as well as inferring policies from patterns of practice they are sometimes formally adopted and documented. It is here that the role of the security forces and decisions to prosecute and the judicial results are useful. For although the various rules of engagement are based upon the conception that they are: "in accordance with Israeli criminal law, with the rulings of the Supreme Court, and have been approved by the IDF Judge Advocate General and the Attorney General's Office"⁹⁷², sometimes they are not. Indeed R.O.E. and orders which encourage illegal activities by members of the security forces constitutes possibly the strongest evidence for the existence of acts of state terrorism.

⁹⁷¹ I.D.F. Deputy JAG Col. David Yahav, letter to Middle East Watch. Middle East Watch. *A License to Kill. Israeli Operations Against "Wanted" and Masked Palestinians*. (Human Rights Watch. New York. 1993.). p147.

⁹⁷² I.D.F. Deputy JAG Col. David Yahav, letter to Middle East Watch. Middle East Watch. *A License to Kill. Israeli Operations Against "Wanted" and Masked Palestinians*. (Human Rights Watch. New York. 1993.). p147. Also "opening fire shall be justified according to the general principle of the Penal Law". Paragraph 5 of affidavit from then Deputy Chief of Staff E.Barak to H.C.J. B'Tselem. *Activity of the Undercover Units in the Occupied Territories* (B'Tselem. Jerusalem. May 1992.). p22.

Therefore reports such as those made by the U.S. Department of State's 1988 Country Report on Israel, which assert that the guidelines issued to the I.D.F., "were often not followed" and that "[s]oldiers frequently used gunfire in situations that did not present mortal danger to troops, causing many avoidable deaths and injuries"⁹⁷³, cannot be simply taken as indicating illegal acts. However when coupled with an I.D.F. reservist's claim that it was made clear to them that it was unlikely that any proceeding would be taken against them for overuse of force, at least if the force was not recorded on television⁹⁷⁴, they do strongly suggest that some of the shootings were illegal, and therefore potentially terrorist. This said, Middle East Watch noted that the official written rules of engagement given to soldiers in the occupied territories are "for the most part" consistent with its law enforcement procedure⁹⁷⁵; whilst on many occasions soldiers have shot the targeted individuals only after they had drawn a gun or opened fire, a point supported by the fact that a number of Israeli soldiers have been shot dead in the process of attempting to arrest dangerous suspects⁹⁷⁶.

It is of course impossible to examine all of the thousands of shootings that have resulted in deaths and woundings within the West Bank and Israel. It is for this reason that the focus of this assessment will be on the evidence put forward as to why some of the fatal shootings were illegal and therefore potentially terrorist according to this author's definition, starting with the defence of justification.

⁹⁷³ U.S. Department of State Country Report 1988, p1377 in O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p239.

⁹⁷⁴ Ronit Matalon "The Wild West". *Haartz* March 11 1988 in Israeli League for Human and Civil Rights. Reports on the Violations of Human Rights in the Territories during the Uprising. Cited by National Lawyers Guild. *Treatment of Palestinians in Israeli-Occupied West Bank and Gaza: Report of the National Lawyers Guild*. (National Lawyers Guild. New York.1988.). p21. Also "On my first day [of service] , I heard that during an officers' meeting a question had been put to the commander about what was permitted and what was forbidden. And also , about what would happen to someone who opened fire. The answer to the question was "I've been here for nine months, hundreds of shots have been fired, tens of people have been wounded, and nobody has been brought to trial". Ronit Matalon 11 March 1988 Ha'aretz Cited by Al-Haq *Punishing The Nation: Human Rights Violations During the Palestinian Uprising. Dec.1987-Dec.1988* . (South End Press. Boston. 1990.). p11.

⁹⁷⁵ Middle East Watch. *A License to Kill. Israeli Operations Against "Wanted" and Masked Palestinians*. (Human Rights Watch. New York. 1993.). p11.

⁹⁷⁶ Middle East Watch. *A License to Kill. Israeli Operations Against "Wanted" and Masked Palestinians*. (Human Rights Watch. New York. 1993.). p9-10. I.D.F. put the number of soldiers killed in occupied territories from the beginning of the *intifada* up until may 31, 1993 at 37. (no other reference given)

Prior to the *Ankonina* judgement in 1990, the Israeli security forces could shoot (to wound) anyone they suspect of committing a felony⁹⁷⁷, in accordance with the 'defence of justification'. Therefore genuine attempts to arrest suspects in this manner would not be classified as state terrorism under this author's definition for the victim of this politically motivated violence would not be an innocent victim in accordance with this author's definitional requirements, instead he would be a genuine suspect, and the action would be legal.

Following Justice Shamagar's comments in the *Ankonina* case this rather permissive 'defence of justification' was changed in 1990 so that this 'shoot to stop a suspected felon' policy would no longer be in force. Instead of simply requiring the suspicion of a felony, Justice Shamagar laid down three prior and necessary conditions for the successful use of this defence by members of the security forces; the arrest must be legal and made in connection with a dangerous felony and that there was no other way to make the arrest⁹⁷⁸. The practical expression of such a legal arrest using live ammunition was a three stage procedure in which the suspect was given a verbal warning to stop. If this failed a shot could be fired into the air followed if necessary by the use of live ammunition against the suspect's legs. The first two stages could only be skipped over in situations of self-defence when the victim posed an "a grave immediate danger" to the official or to the person he was protecting.

This said, critics have claimed that this was still too permissive, in that the legal term "dangerous felony" could be seen to include membership or activity in a banned organisation, or hurling stones in a way that endangers lives. If so then as the Lawyers Committee for Human Rights noted: "virtually any Palestinian fleeing the army is potentially liable to be shot on suspicion of membership or activity in the PLO, or stone-

⁹⁷⁷ Shachar wrote "'A felony punishable by...imprisonment for more than three years" is a felony as defined by the Interpretation Law [Interpretation Law, 1981, sec. 3 (35.L.S.i.370): "This definition of felony has been in force since at least 1945"ftn 93]" , and not a serious felony. It was precisely of such a "felony" that Agranat J. spoke of in *Gold*". Shachar Y. 'The Use of Deadly Force in Enforcing the Law: *Gold* in the Light of History. *Israeli Law Review*. Vol 26. (3) 1992. pp319-354. p350.

⁹⁷⁸ B'Tselem. *Activity of the Undercover Units in the Occupied Territories* (B'Tselem. Jerusalem. May 1992.). p27.C.A.57/53 P.D. 7 1126.

throwing"⁹⁷⁹, and it would therefore be "all but impossible to prove that such an assumption was 'unreasonable' in the circumstances"⁹⁸⁰. However this author takes the view that the notion of necessity contained within the legal 'defence of justification' after the *Ankonina* trial required more than this, and that any genuine shootings to wound Palestinians even on the grounds of reasonable suspicion of "membership or activity in a hostile organisation", violated the principle of proportionality required as expressed by the judge in terms of the three stage procedure.

This thesis therefore takes the view that since 1990 only the use of live ammunition by the Israeli security forces which genuinely aimed at the legs of a person, genuinely suspected of a dangerous felony who looked that they would almost immediately pose a threat of harm to others, would be legal under the 'defence of justification'. So the question to be answered becomes 'Is there any evidence to suggest that Israeli security forces carried out shootings which were not in accord with either this new legal defence or the laws of self-defence?'. The answer to which is 'yes'. For example after examining of the use of force by I.D.F. undercover units *vis-a-vis* mainly wanted and masked men since 1988, Middle East Watch have claimed that "there is a shoot-to-kill policy in at least a subset of cases"⁹⁸¹ and a closer scrutiny of these reveals strong evidence of illegality.

⁹⁷⁹ Letter from Lawyers Committee for Human Rights to Yitzhak Shamir (10 March 1988) Footnote 13 Al-Haq *Punishing The Nation: Human Rights Violations During the Palestinian Uprising. Dec.1987-Dec.1988* .(South End Press. Boston. 1990.). p40.

⁹⁸⁰ Letter from Lawyers Committee for Human Rights to Yitzhak Shamir (10 March 1988) Footnote 13 Al-Haq *Punishing The Nation: Human Rights Violations During the Palestinian Uprising. Dec.1987-Dec.1988* .(South End Press. Boston. 1990.). p40. The lawyers claim should not be seen as an outlandish statement in light of the Attorney general's statement that he considered "probably all" of the residents of the Gaza Strip as members of the P.L.O. See B'Tselem *Deportation of Palestinians from the Occupied Territories and the Mass deporation of December 1992*. (B'Tselem. Jerusalem. June 1993.) p48.

⁹⁸¹ Middle East Watch. *A License to Kill. Israeli Operations Against "Wanted" and Masked Palestinians*. (Human Rights Watch. New York. 1993.). p12. Middle East Watch also offer evidence which suggests that use of force in violation of the law routinely goes unpunished. With cover-ups extending from the rank-and-file to the senior military establishment, and relying on the acquiescence of the government of Israel"Middle East Watch. *A License to Kill. Israeli Operations Against "Wanted" and Masked Palestinians*. (Human Rights Watch. New York. 1993.). p1. To the extent that it is more the exception than the rule that special- force soldiers who wrongfully kill Palestinians are punished.Middle East Watch. *A License to Kill. Israeli Operations Against "Wanted" and Masked Palestinians*. (Human Rights Watch. New York. 1993.).

The first of these "subset of cases" is Middle East Watch's claim that undercover agents deliberately failed to fire at the legs of fleeing suspects and ended up hitting unarmed Palestinians in the upper body. Middle East Watch's claim that this has occurred in a "significant number" of cases, and cite a former first lieutenant who said:

"what everyone does is fire to stop the person, and then later, if necessary, say that they had fired at the legs and missed. No one can give you a hard time for not being a good shot"⁹⁸².

An example of this appeared at the trial of a commander of a so called 'Shimshon' undercover unit who told his troops to aim at torso in contradiction of the defence of justification⁹⁸³. Middle East Watch add depth to their claim with evidence that in "many" of this "significant number" of cases the victims have suffered multiple gunshot wounds⁹⁸⁴, which tends to support the idea that the perpetrators had not attempted to arrest the victim in accordance with the arrest procedure laid down in the *Ankonina* case. As for whether such actions would constitute state terrorism in accordance with this author's definition, the answer could be 'yes', but only if the intent of any members of the security forces perpetrating such illegal acts was to deter other people from stone throwing or protesting, thus fulfilling the definitional requirement that the intention of the act was to modify the behaviour of others.

Other incidents involving the use of deadly force which would be illegal and potentially terrorist in accordance with my definition would be any incidents before or after the *Ankonina* case, in which the security forces killed suspects effectively in custody, neither threatening his

p27. Such factors raise the issue of where exactly responsibility should lie for such acts once again.

982 Middle East Watch. *A License to Kill. Israeli Operations Against "Wanted" and Masked Palestinians*. (Human Rights Watch. New York. 1993.). p17.

983 Middle East Watch. *A License to Kill. Israeli Operations Against "Wanted" and Masked Palestinians*. (Human Rights Watch. New York. 1993.). p17., 163-7. The trial occurred in 1991-2.

984 Middle East Watch. *A License to Kill. Israeli Operations Against "Wanted" and Masked Palestinians*. (Human Rights Watch. New York. 1993.). p13.

captors nor attempting to escape⁹⁸⁵. Middle East Watch have suggested that this type of killings have occurred both before and after 1990⁹⁸⁶.

Middle East Watch also suggested that there have been cases including well-planned ambushes⁹⁸⁷, in which the suspects have been shot dead without first being given an opportunity to surrender when the situation would have allowed it⁹⁸⁸. Indeed this human rights organisation went as far as suggesting that senior members of the security forces have targeted individual Palestinians for assassination⁹⁸⁹. Such killings which could not be justified in accordance with either the laws on self-defence or justification (after the *Ankonina* judgement) would also include those incidents of undercover forces who opened fire without warning against suspects who were either entirely unarmed or else carried "cold weapons" in a way that did not threaten others⁹⁹⁰. Strong evidence that such actions have occurred come in the allegations made by the Israeli press that in February 1993 the I.D.F. modified its R.O.E. so that the term "mortal danger" included any visual contact between armed Palestinians and I.D.F. personnel, meaning, apparently, that any Palestinian *carrying* a firearm could be shot dead on sight⁹⁹¹. This problem appears to have

985 Middle East Watch. *A License to Kill. Israeli Operations Against "Wanted" and Masked Palestinians*. (Human Rights Watch. New York. 1993.). p13.

986 Middle East Watch. *A License to Kill. Israeli Operations Against "Wanted" and Masked Palestinians*. (Human Rights Watch. New York. 1993.). p153-58.

987 in which security forces could have effected an arrest but made little or no attempt to do so" Middle East Watch. *A License to Kill. Israeli Operations Against "Wanted" and Masked Palestinians*. (Human Rights Watch. New York. 1993.). p12.

988 Middle East Watch. *A License to Kill. Israeli Operations Against "Wanted" and Masked Palestinians*. (Human Rights Watch. New York. 1993.). p16.

989 Middle East Watch. *A License to Kill. Israeli Operations Against "Wanted" and Masked Palestinians*. (Human Rights Watch. New York. 1993.). p14.

990 Middle East Watch. *A License to Kill. Israeli Operations Against "Wanted" and Masked Palestinians*. (Human Rights Watch. New York. 1993.). p12.

991 Israel Radio in English, March 31 1993 as reported in FBIS, cited by Middle East Watch. *A License to Kill. Israeli Operations Against "Wanted" and Masked Palestinians*. (Human Rights Watch. New York. 1993.). p43. The same could be said of the allegation that on March 30 1993 the Israeli Cabinet approved new rules of engagement which authorized soldiers to shoot armed Palestinians on sight, regardless of whether they were preparing to fire their weapons when sighted. Israel Radio in Hebrew, March 30 1993, as reported in FBIS, March 31 1993. Middle East Watch. *A License to Kill. Israeli Operations Against "Wanted" and Masked Palestinians*. (Human Rights Watch. New York. 1993.). p45-6. Also the district commander of Nablus said on Israeli television in March 1992 stated "Anyone carrying a weapon is in fact a potential attacker, and from our point of view he is a danger. In light of that, as long as he has a weapon, we'll hit him" C.Haberman, 'Killings of Palestine Suspects Raise Questions about Israeli Army Agents' The New York Times April 12 1992. Whilst in May 1992 the commander

been repeated within orders given to soldiers by senior officers that encourage them to carry out illegal acts. For example a former sergeant in an elite infantry unit in 1991-2 is quoted as having said:

"The unit commander said we were going to lay an ambush and that the objective was to 'stick' the person... To 'stick' means to kill. There is no doubt about that. That is the term we use in Lebanon all the time. It means to shoot to kill. That is what everyone in the briefing room understood..."⁹⁹².

Likewise a Company commander of the *Givanti* infantry brigade said on I.D.F. radio broadcast February 9 1993:

"My entire company is involved at this point in the hunt, in the pursuit after the terrorists walking around here....They are forces whose aim is to clash, to come into contact, to charge and to eliminate the terrorists; this is the only thing they are doing, and this is the sole thing they are preoccupied with"⁹⁹³.

Similarly, many of the R.O.E. and orders which were introduced to deal with 'masked' and 'wanted' men constitute evidence of illegal actions by members of the (usually undercover) security forces. It is true that some masked activists were involved in violent activity, including the torture and execution of suspected collaborators, enforcing commercial strikes, barricading and closing streets or stoning Israeli vehicles, but others were guilty of nothing more than spray-painting political slogans on public walls or participating in marches⁹⁹⁴. Thus contrary

of Israel's central region which includes the West Bank is reported to have said : "When somebody carries in a clear way a weapon or holds a pistol in his hand, he poses a danger to life, and he will be shot without warning". Maj. Gen Danny Yatom "Israel Asserts Armed Palestinians Will Be killed Without Warning" *New York Times*. May 7 1992. Both Middle East Watch. *A License to Kill. Israeli Operations Against "Wanted" and Masked Palestinians*. (Human Rights Watch. New York. 1993.). p46.

⁹⁹² Middle East Watch. *A License to Kill. Israeli Operations Against "Wanted" and Masked Palestinians*. (Human Rights Watch. New York. 1993.). p14.

⁹⁹³ Middle East Watch. *A License to Kill. Israeli Operations Against "Wanted" and Masked Palestinians*. (Human Rights Watch. New York. 1993.). p15 They also note a Sergeant in one unit southern command who said that regional commanders sent a bottle of champagne each time one of the thirteen wanted persons identified by the General in charge of the southern command was shot. The Sergeant also recalled the General as having said "I believe that if these thirteen were to die the intifada would be over. At least, we would have quiet for six months". Middle East Watch. *A License to Kill. Israeli Operations Against "Wanted" and Masked Palestinians*. (Human Rights Watch. New York. 1993.). p15

⁹⁹⁴ Middle East Watch. *A License to Kill. Israeli Operations Against "Wanted" and Masked Palestinians*. (Human Rights Watch. New York. 1993.).p23.

to the impression gathered by the soldiers who testified to I.D.F. investigators and to military courts that they believed they were supposed to kill masked activists⁹⁹⁵, 'masked' individuals could constitute a danger in the form of a concrete assault which warranted the use of deadly force in self-defence⁹⁹⁶.

In contrast when the undercover Israeli forces went after the so called "wanted" suspects they automatically knew that the individual was suspected of something, and usually something serious in that the official wanted list contained only a fraction of all Palestinians sought by the authorities. According to the I.D.F. the list included "armed, hard core terrorists, who do not adhere to any code of law [and] have engaged in terror attacks"⁹⁹⁷, and in their own words the I.D.F. assumed that the 'wanted' Palestinian "would not hesitate to open fire if engaged"⁹⁹⁸. However as Middle East Watch point out, to label someone as a 'terrorist' does not change the legal standards on police practices that govern efforts to apprehend them⁹⁹⁹. Thus contrary to the impression gathered by many soldiers¹⁰⁰⁰, a wanted (or masked) person could constitute a danger in themselves, even when have been labelled as "wanted" because they were suspected of having committed dangerous felonies. The "wanted" victim of a fatal shooting must have posed an immediate

⁹⁹⁵During 1989, soldiers were instructed to open fire at any masked Palestinian they encountered. Indeed some testified to IDF investigators and to military courts that they believed they were supposed to kill masked activists. Middle East Watch. *A License to Kill. Israeli Operations Against "Wanted" and Masked Palestinians*. (Human Rights Watch. New York. 1993.).p61

⁹⁹⁶B'Tselem *Activity of the Undercover Units in the Occupied Territories* (B'Tselem. Jerusalem May 1992.). p24. B'Tselem for example argue that the recent introduction by the I.D.F. to their ROEs of quasi legal terms such as "wanted persons" "masked individuals" "special units" etc. have no legal foundation or validity unless they conform to the relevant provisions of the criminal law Indeed they go as far as claiming they were "invented to justify the use of live ammunition". B'Tselem *Activity of the Undercover Units in the Occupied Territories* (B'Tselem. Jerusalem May 1992.). p23

⁹⁹⁷ I.D.F. response to B'Tselem *Activity of the Undercover Units* p110 cited by Middle East Watch. *A License to Kill. Israeli Operations Against "Wanted" and Masked Palestinians*. (Human Rights Watch. New York. 1993.). p24.

⁹⁹⁸ I.D.F. response to B'Tselem *Activity of the Undercover Units* p113 cited by Middle East Watch. *A License to Kill. Israeli Operations Against "Wanted" and Masked Palestinians*. (Human Rights Watch. New York. 1993.). p24.

⁹⁹⁹ Middle East Watch. *A License to Kill. Israeli Operations Against "Wanted" and Masked Palestinians*. (Human Rights Watch. New York. 1993.). p25.

¹⁰⁰⁰During 1989, soldiers were instructed to open fire at any masked Palestinian they encountered. Indeed some testified to I.D.F. investigators and to military courts that they believed they were supposed to kill masked activists. Middle East Watch. *A License to Kill. Israeli Operations Against "Wanted" and Masked Palestinians*. (Human Rights Watch. New York. 1993.).

and imminent threat of grievous harm to life at the time of the incident to justify the use of deadly force in self-defence. Likewise if the soldiers defence was that he had intended to shoot to wound whilst attempting an arrest in accordance with the defence of justification, there would have had to be a warning, and any shooting would have had to have been aimed at the legs with only enough live ammunition to stop the suspect.

Further evidence of the execution of such illegal shootings lies in the accounts that agents of the *Shin Bet* warned the families of 'wanted' suspects that unless their relative turn themselves in, these suspects faced death at the hands of the special forces as Middle East Watch¹⁰⁰¹. It can also be seen in the tactic introduced by the Rabin government following the killing of undercover soldiers in separate incidents in August 1992¹⁰⁰². After sealing off and emptying the neighbourhoods in which suspects were thought to be hiding, the Israelis then asked the suspect to surrender and if s/he failed to do so, they attacked the suspected hideout from a distance with rockets, launched grenades, machine guns and other heavy ordnance¹⁰⁰³. Again it is difficult to see how these killings could be justified under the laws of self-defence or justification. Therefore, if this author's interpretation of Israeli law is correct, and the aim of such state violence was to deter others, such

1001 Middle East Watch. *A License to Kill. Israeli Operations Against "Wanted" and Masked Palestinians*. (Human Rights Watch. New York. 1993.). p9.

1002 Middle East Watch. *A License to Kill. Israeli Operations Against "Wanted" and Masked Palestinians*. (Human Rights Watch. New York. 1993.). p5-6.

1003 Middle East Watch. *A License to Kill. Israeli Operations Against "Wanted" and Masked Palestinians*. (Human Rights Watch. New York. 1993.). p6. It has also been claimed that the inhabitants of targeted buildings were not found in many cases, that certain suspects have been shot after they have surrendered. Taylor notes two incidents the first on 26 August 1992 in Jenin., the second on 14 January 1993 in Al-Jdayda village, near Jenin. Taylor T. *Missiles and Dynamite: The Israeli Military Forces Destruction of Palestinian Homes with Anti-tank Missiles and High Explosives*. (Al-Haq. Ramallah. 1993.). p68. That demolitions have been carried out even though the suspect had surrendered. These have occurred in Gaza rather than the West Bank. Taylor notes only 4 in the West Bank. Taylor T. *Missiles and Dynamite: The Israeli Military Forces Destruction of Palestinian Homes with Anti-tank Missiles and High Explosives*. (Al-Haq. Ramallah. 1993.).p67-68. For the latter claim see Taylor T. *Missiles and Dynamite: The Israeli Military Forces Destruction of Palestinian Homes with Anti-tank Missiles and High Explosives*. (Al-Haq. Ramallah. 1993.). p6.. In a study of fifteen assaults between September 1992 and April 1993, B'Tselem noted that forty-nine houses were demolished and in only seven of the assaults were "wanted" persons found to be hiding. Middle East Watch. *A License to Kill. Israeli Operations Against "Wanted" and Masked Palestinians*. (Human Rights Watch. New York. 1993.). p6. Citing B'Tselem *House Demolitions during Operations Against Wanted People*. (B'Tselem. Jerusalem. May 1993). No page reference given.

illegal actions would constitute acts of terrorism in accordance with this author's definition.

The next issue to be addressed within this assessment is how do these various allegations fair in relation to the other definitions of state terrorism. All the uses of such violence to make arrests would qualify under the U.K.'s Prevention of Terrorism Act's definition for it merely required that the violence was used for "political ends" (the issue of do those carried out in self-defence, is more debateable , but must also be seen in the same way, as they are targetted for political reasons). Similarly all would qualify under the definition derived from Israel's Prevention of Terrorism Ordinance for it merely required that the threats or "acts of violence were calculated to cause death or injury to a person" whether legal or not. In contrast all the uses of deliberate deadly violence would *only* qualify under Stohl and Lopez's definition if the simultaneous aim was to send a message to an audience. This was because the other criteria within their definition required that the purpose of the violence was "to create fear and/or compliant behaviour in a victim" which would be impossible if the intention had been to kill the individual. The idea that the security forces hoped to deter others is quite plausible and no doubt some such actions have occurred and only these would be labelled as state terrorism.

Interestingly the two remaining definitions both required that the State's violence was carried out by covert operators, which rules out many of the shootings by Israeli forces, although many remain. The other demands made by the U.S. definition is that the violence was premeditated and it was carried out against non-combatants. If one allows for the fact that many of the shootings occurred at an instant in response to events, this could leave only those incidents in which undercover security forces killed either suspects in custody or in ambushes¹⁰⁰⁴, or when the suspects were not given an opportunity to surrender when they could have been as was suggested in regards to the killings of wanted and masked men. The issue then becomes were these victims non-combatants?. The answer given here is 'yes' for the Israeli's have decided to apply the law rather than the laws of war. As a

¹⁰⁰⁴ Middle East Watch. *A License to Kill. Israeli Operations Against "Wanted" and Masked Palestinians*. (Human Rights Watch. New York. 1993.). p13.

result it can be said that only these shootings would constitute acts of terrorism in accordance with the U.S. definition.

As for whether any of the undercover shootings qualify under Schmid and Jongman's definition, the issue of shooting certainly qualifies on the basis of the repeated nature of the action (with the exception of the first one). Those shot were also human beings and undoubtedly those carried out to enforce an arrest (if not others) "served as message generators". More problematic is the question of intent and whether those to whom the message was sent was the main target and not the victim. Schmid and Jongman explicitly state that assassinations do not equal terrorism. It is on the basis that the killings of Palestinians in order to make arrests were at most *simultaneously* aimed to deter others, as well as to injure or kill the individual victim, that all the killings cannot qualify for Schmid's definition which demands that the main aim being the sending of a message. Those done in self-defence surely do not fulfil Schmid and Jongman's definitional requirement in that the main target is obviously the victim.

Torture.

A History.

Unlike all of the other activities under review Israel has not produced legislation which authorises a counter-terrorist policy called 'torture', although according to some critics this is the actual outcome of other pieces of its legislation. Here the focus is on the allegations of torture during interrogation rather than during the period of incarceration that follows sentencing by a court.

A few allegations of torture and ill treatment of Palestinian political detainees began to appear three or four years after the 1967 occupation of the West Bank¹⁰⁰⁵. Then in June 1977 a report by the Sunday Times 'Insight' team¹⁰⁰⁶ brought such allegations into the headlines of the Western press. Based upon a review of dozens of files the Sunday Times alleged that interrogators -especially those from the *Shin Bet* - used methods such as confinement in small specially constructed cells¹⁰⁰⁷, repeated cold showers, beatings and electric shock to extract information¹⁰⁰⁸. Furthermore the Sunday Times claimed that it constituted "systematic torture" for it "was organised so methodically that it could not be dismissed as a handful of 'rogue cops' exceeding orders"¹⁰⁰⁹. Whilst during the period 1977-79, the US consulate in Jerusalem send 40 cables which reported the following practices. Namely prolonged beatings; confinement in extremely small specially constructed cells; hanging by the hands or feet; 'refrigeration' and exposure to extremely hot temperatures; forced sleeplessness and food deprivation; shackling in awkward positions; long periods of standing with arms raised or in physically uncomfortable positions¹⁰¹⁰. In one

1005 B'Tselem. *The Interrogation of Palestinians During the Intifada: Ill-treatment "Moderate Physical Pressure" or Torture?*. (B'Tselem. Jerusalem. March 1991.). p32

1006 American-Arab Anti-Discrimination Committee. *The Bitter Year Arabs Under Israeli Occupation in 1982* . (American-Arab Anti -Discrimination Committee. Washington DC. 1983.). p15.

1007 Phillips M. 'Torture for "Security"'. Unpublished paper. Al-Haq. Ramallah.1994. p30.

1008 B'Tselem. *The Interrogation of Palestinians During the Intifada: Ill-treatment "Moderate Physical Pressure" or Torture?*. (B'Tselem. Jerusalem. March 1991.). p32

1009 Sunday Times cited by Phillips M. 'Torture for "Security"'. Unpublished paper. Al-Haq. Ramallah.1994. p30

of these cables sent in 1978 the Vice-Consul Alexandra Johnson reported that "the post has assembled a body of first hand testimony indicating that Israeli torture of Arab prisoners may be a systematic practice"¹⁰¹¹.

During the 5 or 6 years following the Sunday Times report such allegations were rarely made apparently because of the restraints personally ordered by Prime Minister Begin¹⁰¹², although allegations that the police and I.D.F. used violence at the places of detention rather than during interrogations were made¹⁰¹³ By 1984 the number of allegations recorded by human rights groups and Palestinian lawyers increased¹⁰¹⁴, and even Israel itself tried and convicted an Israeli police interrogator for torturing a Palestinian teacher who had been detained at Fara'a prison in the previous year¹⁰¹⁵.

However allegations of torture once again made the headlines of the Western press following the publication of a report by a commission set up by Israel itself following criticism of the 'Nafsu Affair'¹⁰¹⁶ and the 'No. 300 Bus Affair'¹⁰¹⁷. The report of the Landau Commission set up to investigate the role of the *Shin Bet* within these two scandals, concluded that confessions it presented in court between 1967 and 1971 were obtained legally and in good faith. In contrast to the situation from 1971 onwards when the *Shin Bet* began to lie consistently to the courts,

1010 Phillips M. 'Torture for "Security"'. Unpublished paper. Al-Haq. Ramallah.1994. p31. See reports on cables in Journal of Palestine Studies Vol IX No 2 Winter 1980 p80-117.

1011 Jerusalem 3239 cable cited by Phillips M. 'Torture for "Security"'. Unpublished paper. Al-Haq. Ramallah.1994. p30-31.

1012 B'Tselem. *The Interrogation of Palestinians During the Intifada: Ill-treatment "Moderate Physical Pressure" or Torture?*. (B'Tselem. Jerusalem. March 1991.). p32.

1013 B'Tselem. *The Interrogation of Palestinians During the Intifada: Ill-treatment "Moderate Physical Pressure" or Torture?*. (B'Tselem. Jerusalem. March 1991.). p32.

1014 B'Tselem. *The Interrogation of Palestinians During the Intifada: Ill-treatment "Moderate Physical Pressure" or Torture?*. (B'Tselem. Jerusalem. March 1991.). p32.

1015 Israeli League for Human and Civil Rights reported that they were convicted of grievous bodily harm. No name. Cited by American-Arab Anti-Discrimination Committee. *Report on Israeli Human Rights Practices in the Occupied Territories for 1984*. (American-Arab Anti-Discrimination Committee. Washington DC 1985.).p13-14.

1016 In the so called Nafsu affair, a Cirassian Israeli army officer succesfully appealed against his conviction for treason on the grounds that his original confession had been extracted by force. His acquittal in May 1987, prompted the Landau report which was set up in June 1987.

1017 This involved the beating to death of 2 Palestinians who had just been captured after hijacking an Israeli bus, April 1984, and the scandal surrounding a subsequent cover up.

denying that it had used physical force to extract confessions¹⁰¹⁸. More controversially the Landau Commission agreed with the *Shin Bet*'s position that without some form of physical pressure "effective interrogation is inconceivable"¹⁰¹⁹, and therefore made recommendations about the use of "moderate physical pressure" against those suspected of hostile terrorist activity (H.T.A.). The recommendations of the report were formally adopted by the Knesset on 8 November 1987¹⁰²⁰ and that has kept Israel's interrogation practices under close scrutiny ever since.

Since then various human rights groups have made allegations regarding Israeli interrogation techniques. For example in 1990 the Lawyers Committee for Human Rights noted "numerous and credible reports of torture and ill-treatment"¹⁰²¹. The Israeli human rights group *B'Tselem* produced a report based on interviews with 41 people who had been interrogated by the *Shin Bet* between 1988 and 1990¹⁰²². Although not one of the sample was found guilty or even suspected of serious 'hostile terrorist activity' to whom Landau envisaged its use¹⁰²³, many were accused of activities such as stone throwing, or raising the Palestinian flag etc. *B'Tselem* found that:

¹⁰¹⁸ B'Tselem. *The Interrogation of Palestinians During the Intifada: Ill-treatment "Moderate Physical Pressure" or Torture?*. (B'Tselem. Jerusalem. March 1991.). p23.

¹⁰¹⁹ Paragraph Para 2.37 of the Landau Commission Report cited by B'Tselem. *The Interrogation of Palestinians During the Intifada: Ill-treatment "Moderate Physical Pressure" or Torture?*. (B'Tselem. Jerusalem. March 1991.). p24.

¹⁰²⁰ Walfish A. 'Cabinet to Set Up Watchdog Group Over Shin Bet' Jerusalem Post. 9 Novemebr 1987. Cited by Phillips M. 'Torture for "Security"'. Unpublished paper. Al-Haq. Ramallah.1994. p38.

¹⁰²¹ Lawyers Commitee for Human Rights Critique of U.S. State Department's annual review of human rights in the Occupied Territories" Mid 1991 cited in B'Tselem. *The Interogation of Palestinians During the Intifada: Follow Up to March 1991. B'Tselem Report*. (B'Tselem. Jerusalem. March 1992.). p39. Whilst in early 1990 Israel itself sentenced two *Shin Bet* agents to 6 months imprisonment for "causing death by negligence" by beating Khaled Sheikh 'Ali to death during his interrogation in Gaza Central Prison in December 1989. B'Tselem. *The Interrogation of Palestinians During the Intifada: Ill-treatment "Moderate Physical Pressure" or Torture?*. (B'Tselem. Jerusalem. March 1991.). p43.

¹⁰²² B'Tselem. *The Interrogation of Palestinians During the Intifada: Ill-treatment "Moderate Physical Pressure" or Torture?*. (B'Tselem. Jerusalem. March 1991.). p106.

¹⁰²³ B'Tselem. *The Interrogation of Palestinians During the Intifada: Follow Up to March 1991. B'Tselem Report*. (B'Tselem. Jerusalem. March 1992.). p8.

"Virtually all our sample were subject to; verbal abuse, humiliation and threats of injury; sleep and food deprivation; hooding for prolonged periods; enforced space, hands bound behind the back and legs tied ("al Shabah"); being bound in other painful ways (such as the "banana" position); prolonged periods of painful confinement in small, specially constructed cells (the "closet" or "refrigerator" and severe and prolonged beating on all parts of the body, (resulting sometimes in injuries requiring medical treatment)"¹⁰²⁴.

Other methods included the use of violence by collaborators planted in detention cells. B'Tselem estimated that during the *intifada* some 1,600 per year would undergo intense interrogation, "including some combination of the practices" described above¹⁰²⁵.

In 1991 Amnesty complained that torture or ill-treatment was "virtually institutionalised"¹⁰²⁶. After studying scores of affidavits and testimonies from a variety of detainees, lawyers and local human rights groups and sometimes even medical reports and the results of official investigation Amnesty concluded that the substantive evidence available indicated the existence of a clear pattern of systematic psychological and physical ill-treatment, constituting torture or other forms of cruel, inhuman or degrading treatment", inflicted upon detainees during the course of investigation. Methods used on "a systematic scale" included:

"hooding with a dirty sack, sometimes wet, which often hinders breathing, and sleep and food deprivation while held in solitary confinement. Also typically used are prolonged bondage in plastic or metal handcuffs usually in painful positions (a practice called *shabah*) and being confined in a very small and darkened cells referred to as "closets" or "coffins", as well as in small cold cells called "refrigerators". Beatings all over the body, often severe and sometimes concentrated on sensitive areas such as the genitals, are also inflicted with relative frequency. Other methods include burning with cigarettes; prolonged

¹⁰²⁴ B'Tselem. *The Interrogation of Palestinians During the Intifada: Ill-treatment "Moderate Physical Pressure" or Torture?*. (B'Tselem. Jerusalem. March 1991.). p106.

¹⁰²⁵ B'Tselem. *The Interrogation of Palestinians During the Intifada: Ill-treatment "Moderate Physical Pressure" or Torture?*. (B'Tselem. Jerusalem. March 1991.). p107.

¹⁰²⁶ Amnesty International. *Israel and the Occupied Territories* (Amnesty London. July 1991.) B'Tselem. *The Interrogation of Palestinians During the Intifada: Follow Up to March 1991. B'Tselem Report*. (B'Tselem. Jerusalem. March 1992.). p39.

denial of access to toilets; verbal abuse and threats of various kinds; and forms of sexual harassment particularly with women detainees"¹⁰²⁷.

The U.S. State department in a report issued in early 1992, noted that international, Israeli and Palestinian human rights groups published detailed credible reports of torture, abuse and mistreatment of Palestinian detainees in prisons and detention centres in the previous year. It also used the term "credible" to describe the Palestinian Human Rights Information Centre's allegation of eight cases of electric shock in Hebron military headquarters mainly in April 1991¹⁰²⁸.

Finally the Palestinian human rights group *Al-Haq* interviewed 708 people in a random sample who had been detained by the Israelis between 1988 and May 1992. From this they concluded that 855 of those Palestinians taken into custody were subject to "torture or ill-treatment", a figure that rises to 94% for those interrogated¹⁰²⁹. They suggested that 6.8% of the 234 interrogated detainees in the sample received electric shocks¹⁰³⁰.

The Legalities.

According to the Landau Commission "effective interrogation of terrorist suspects is impossible without the use of means of

¹⁰²⁷ Amnesty International *Israel and the Occupied Territories: The Military justice System in the Occupied territories: Detention, Interrogation and Trial Procedures*. (London:Amnesty International July 1991) cited by B'Tselem. *The Interrogation of Palestinians During the Intifada: Follow Up to March 1991 B'Tselem Report*. (B'Tselem. Jerusalem. March 1992.). p38. Also allegations from some of the 15 Jewish settlers in the Underground Organization September 1994, milder pushing, but sacks over head, verbal abuse, being shoved food, medical deprivation. B'Tselem. *Torture During Interrogations*. (B'Tselem. Jerusalem. 1994.). p12.

¹⁰²⁸Citing "Backgrounder:" State department Country Reports on Human Rights Practices for 1991: Israeli and the Occupied Territories (U.S. Information Service: American consulate General, Jerusalem). Also Palestinian Human Rights Information Centre. *Israel's Use of Electric Shock Torture in the Interrogation of Palestinian Detainees* (PHRIC. Jerusalem. December. 1991). B'Tselem. *The Interrogation of Palestinians During the Intifada: Follow Up to March 1991 B'Tselem Report*. (B'Tselem. Jerusalem. March 1992.). p40.

¹⁰²⁹ Phillips M. 'Torture for "Security"'. Unpublished paper. Al-Haq. Ramallah.1994. p11 and for details of the West Bank only see p 51

¹⁰³⁰ Phillips M. 'Torture for "Security"'. Unpublished paper. Al-Haq. Ramallah.1994. p13.

pressure"¹⁰³¹. The pressure under which members of the *Shin Bet* had put those suspected of hostile terrorist activity or political subversion were characterised by "cases of criminal assault, blackmail and threats"¹⁰³². Moreover the Commission went on to say that: the interrogator who employed such measures could justly claim "that he was obeying the orders of his superior and these orders were not clearly illegal"¹⁰³³; and moreover that:

"Interrogation of this kind is permissible under the law as we interpreted it and we think that a confession thus obtained is admissible in a criminal trial, under the existing rulings of the Supreme court"¹⁰³⁴

More specifically the Landau Commission noted that:

"the great evil of Hostile Terrorist Activity justifies countermeasures such as the need to act in the sense of Sec[tion] 22 [of the Israeli Penal Code] not only when the perpetrator of (terrorist) activity is actually imminent, but also when it exists potentially such that it is liable to occur at any time"¹⁰³⁵.

The Commission wrote that the means of pressure should: "principally take the form of non-violent psychological pressure through a vigorous and extensive interrogation, with the use of stratagems, including acts of deception". However, the Commission also noted that: "when these do not attain their purpose, the exercise of a moderate measure of physical pressure cannot be avoided"¹⁰³⁶. It then attempted to limit the effect of

¹⁰³¹ Paragraph 4.6 of Report of the Commission of Inquiry into the Methods of Interrogation of the General Security Service Regarding Hostile Terrorist Activity' (Israel Government Press Office. 30 October 1987).

¹⁰³² Paragraph 4.20 of Report of the Commission of Inquiry into the Methods of Interrogation of the General Security Service Regarding Hostile Terrorist Activity' (Israel Government Press Office. 30 October 1987).

¹⁰³³ Paragraph 4.20 of Report of the Commission of Inquiry into the Methods of Interrogation of the General Security Service Regarding Hostile Terrorist Activity' (Israel Government Press Office. 30 October 1987).

¹⁰³⁴ Paragraph 4.6 of Report of the Commission of Inquiry into the Methods of Interrogation of the General Security Service Regarding Hostile Terrorist Activity' (Israel Government Press Office. 30 October 1987).

¹⁰³⁵ Paragraph 4.13 of Report of the Commission of Inquiry into the Methods of Interrogation of the General Security Service Regarding Hostile Terrorist Activity' (Israel Government Press Office. 30 October 1987).

¹⁰³⁶ Paragraph Para 4.7 of the Landau Commission Report cited by B'Tselem. *The Interrogation of Palestinians During the Intifada: Ill-treatment "Moderate Physical Pressure" or Torture?*. (B'Tselem. Jerusalem. March 1991.). p25.

this by writing that: "the pressure must never reach the level of physical torture or the maltreatment of the suspect or grievous harm to his honour that deprives him of his human dignity"¹⁰³⁷.

The Landau Commission did not address the issue of whether the law prior to the introduction of the Criminal Code 1977 legalised the use of such "moderate physical pressure". However the difference between Section 18 of the Criminal Code 1936 and Section 22 of the Penal Code 1977 is negligible in this respect. The former read:

"An act or omission which would otherwise be an offence may be excused if the person accused can show that it was done or omitted to be done only in order to avoid consequences which could not otherwise be avoided, and which if they had followed would have inflicted grievous harm or injury to his person or to his honour or his property or to the person or honour of others whom he was bound to protect or to property placed in his charge:

Provided that in so acting he did no more than was reasonably necessary for that purpose, and that the harm inflicted by the act or omission was not disproportionate to the harm avoided"¹⁰³⁸.

This was replaced in 1977 by the Penal Law, Section 22 of the latter stated:

"A person may be exempted from criminal responsibility for an act or omission if he can show that it was only done or made in order to avoid consequences that could not otherwise be avoided and which would have inflicted grievous injury or harm to his person, honour or property, or to the person or honour of others whom he was bound to protect, or to the property placed in his charge"

¹⁰³⁷ Paragraph Para 3.16 of the Landau Commission Report cited by B'Tselem. *The Interrogation of Palestinians During the Intifada: Ill-treatment "Moderate Physical Pressure" or Torture?*. (B'Tselem. Jerusalem. March 1991.). p26.

¹⁰³⁸ "A person is not criminally responsible for an act or omission if he does or omits to do the act under any of the following circumstances, that is to say:-

(a) in execution of the law;

(b) in obedience to the order of a competent authority which he is bound by law to obey, unless the order is manifestly unlawful.

Whether an order is or is not manifestly unlawful is a question of law"Section 19 'Justification' The Criminal Code Bill 1936 Draft Ordinance pp973-1066. The Palestine Gazette 25th Spetember 1936. p979 .

Provided that he did no more than was reasonably necessary for that purpose, and that the harm caused by him was not disproportionate to the harm avoided."¹⁰³⁹

This in turn was altered on 18 March 1992¹⁰⁴⁰. Section 22(a) of the Penal Law (Amendment No. 37.) stated that an individual was exempted from criminal responsibility if s/he carried out an act or acts:

"which were immediately necessary in order to prevent the danger of grievous harm to his or another's life, liberty, person or property, stemming from a given situation provided he had no other way to prevent it and that the harm he caused was not disproportionate to the harm he wished to prevent".¹⁰⁴¹

In contrast there are various reasons put forward as to why the use of moderate physical pressure has not be legalised as Landau claimed. One is a narrower interpretation of necessity. Professor Kremintzer for example claimed that one reason to reject the acceptance of this interpretation is that the paragraph is qualified by there being no other way to deal with the situation, another is that the use of pressure is not proportionate to the evil which we want to prevent¹⁰⁴². Critics have also cited Article 277 of the Penal Code 1977 which specified that:

"a public servant who does one of the following is liable to imprisonment for three years: (1) uses or directs the use of force or violence against a person for the purpose of extorting from him or from anyone in whom he is interested a confession of an offence or information relating to an offence; (2) threatens any person, or directs any person to be threatened, with injury to his person or property or to the person or property of anyone in whom he is interested for the purpose of extorting from him a confession of an offence or any information relating to an offence".

¹⁰³⁹ A slightly different translation is cited by B'Tselem. *Activity of the Undercover Units in the Occupied Territories* (B'Tselem. Jerusalem. May 1992.). p23. They note that this also contained the rules on the 'defence of necessity'.

¹⁰⁴⁰ Stein Y. Interview with this author. B'Tselem, Jerusalem. May-June 1995.

¹⁰⁴¹ B'Tselem. *Activity of the Undercover Units in the Occupied Territories* (B'Tselem. Jerusalem. May 1992.). p23. The law now differentiate between 'self-defence' and the 'defence of necessity' which was now contained in section 22(a).

¹⁰⁴² Professor Kremintzer cited in a debate. Public Committee Against Torture in Israel. *Moderate Physical Pressure: Interrogation Methods in Israel*. (Symposium Following the Landau Commission Report. Public Committee Against Torture in Israel. Jerusalem. 1990.). p16

This latter law applies to all those living in Israel itself as well as Israeli citizens in the occupied territories are subject to Israeli law irrespective of the identity of the victim¹⁰⁴³. It has also been argued that any confessions obtained in such a manner would be deemed inadmissible. Unfortunately for the critics, Article 9 of Military Order No.378 states: "a Military Court is authorized to deviate from the laws of evidence for special reasons which shall be recorded, if it seems necessary to do so"¹⁰⁴⁴

The Application Of The Various Definitions Of (State) Terrorism.

Before attempting to assess the allegations of torture in relation to the six definitions it is useful to note that for various authors -including two-thirds of the 120 academics who answered my questionnaire- the use of torture constitutes terrorism by those in power. This however does not mean that the respondents would have labelled the practices allegedly carried out by Israeli security forces as torture.

The first important question to be answered in applying my definition is whether the acts of torture are illegal. Here the author is considering the interpretation given by the Landau Commission rather than the fact that Israel has also signed and ratified the Convention Against Torture and Other Inhuman and Degrading Treatment, the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the Geneva Conventions IV, all of which outlaw torture¹⁰⁴⁵. Unfortunately the assessment is not helped by the fact that

¹⁰⁴³ B'Tselem. *The Interrogation of Palestinians During the Intifada: Ill-treatment "Moderate Physical Pressure" or Torture?*. (B'Tselem. Jerusalem. March 1991.). p17.

¹⁰⁴⁴ B'Tselem. *The Interrogation of Palestinians During the Intifada: Ill-treatment "Moderate Physical Pressure" or Torture?*. (B'Tselem. Jerusalem. March 1991.). p18.

¹⁰⁴⁵ Israel signed the C.A.T. 22 October 1986 and ratified it on 4 August 1991. Article 2 declared: "1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. 2. No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture. 3. An order from a superior officer or a public authority may not be invoked as a justification of torture." Israel signed the International Covenant on Civil and Political Rights 19 Dec 1966, and ratified it on 18 August 1991, Article 7 of which states; "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 5 of the U.D.H.R. states "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or

the issue is far from clarified, and until the H.C.J. rules on the issue the easiest way of addressing the question is to examine both the potential answers in terms of Israeli law. Although if one does take the view that Article 35 of the O.C.S.R. introduced the G.C.I.V. into the region of the West Bank on 7 June (before it was rescinded on 22 October 1967) then any such use of torture would definitely be illegal for it breaches Articles 31 and 32¹⁰⁴⁶. However if the G.C.I.V. were in place during these few months, any torture that occurred in the West Bank could qualify for this author's label. However even then the intention of the torturer would have had to have also been to deter others in order for this use of violence qualify. It is theoretically possible that the Israeli's might want to deter stone throwers for example by this form of violence, but it is highly unlikely given the relative difficulty of capturing and torturing the individual as opposed to simply giving them a beating, or inflicting pain *via* the use of rubber bullets etc..

If the Landau Commission was correct in claiming that the defence of necessity in the 1977 (and presumably the 1936, and 1992) versions of the criminal law had legalised this use of violence, then such acts of torture would probably not constitute state terrorism in accordance with this authors' definition because the use of 'moderate physical pressure' would only be legal when used to acquire information (to find the elusive ticking bomb!). It seems highly unlikely that the torturer could possess the dual aim of gathering information and deterring others on the odd occasion that necessity arose. Any individual member of the security forces carrying out torture purely for this latter reason would be acting illegally and his or her actions would therefore qualify as an act of terrorism in accordance with this author's definition.

punishment". In terms of customary international law, Article 6(b) of the Nuremburg Principles declared "deportation to slave labour or for any other purpose of civilian population of or in occupied territory" as a "war crime", it also declares that "ill-treatment" of civilians of an occupied region as such. Alternatively torture may be covered by article 6(c) which puts "other inhumane acts committed against any civilian population" under the title Crime against Humanity.

¹⁰⁴⁶ Article 35 of the O.S.C.R 1967 stated: "35. A military court and the administrative service of a military court shall apply the provisions of the Geneva Convention relative to the Protection of Civilians in Time of War of 12 August 1949 in all that relates to judicial proceedings, and in case of conflict between this Order and the said Convention, the provisions of the convention shall prevail". Commission on human rights 26th session, Report of the Special Working Group of Experts Established Under Resolution 6 (XXV) of the Commission on human rights" UN/E/CN.4/1016/Add.3. p17.

Likewise if Landau was wrong, and the 'defence of necessity' did not legalise the use of 'moderate physical force' once the suspect was in custody, then all of the violent practices noted would be illegal and could therefore constitute acts of (state) terrorism in accordance with this author's definition. However even then, such actions would qualify *only* if their aim was to influence a larger target audience. Again it is theoretically possible that the Israeli's might want to deter stone throwers for example by this form of violence, but it is highly unlikely given the relative difficulty of inflicting pain in this way.

Whatever the legality of the policy "moderate physical pressure", its use by the Israeli state qualifies for the label of terrorism in accord with the British definition for the Prevention of Terrorism Act. This is because the British P.T.A. requires merely the "use of violence for political ends and includes any use of violence for the purpose of putting...any section of the public" i.e. the victim in fear". It is difficult to deny that the aim of such force is to strike fear into the suspect so that they will give up certain information. It is on this basis that acts of "moderate physical pressure" constitute acts of terrorism in accordance with Stohl and Lopez's definition for even when the torture accidentally leads to death it fulfils the requirements of being a "purposeful act or threat of violence" designed "to create fear and/or compliant behaviour in a victim" of the act or threat¹⁰⁴⁷. Similarly the use of torture by Israel's security forces would constitute acts of terrorism in accord with the definition derived from Israel's Prevention of Terrorism Ordinance, for it requires only acts of violence that are *calculated* to cause death or injury to a person.

Whether the Israeli actions fulfil the U.S. definition is more debatable. Putting the requirement of being "usually" intended to influence an audience to one side, *Shin Bet*'s use of "moderate physical pressure' is certainly "premeditated and politically motivated violence". The debate is where the victim is a non-combatant target and whether *Shin Bet*

¹⁰⁴⁷ Stohl M. and Lopez G.A. 'Introduction' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport. Connecticut. 1984.).pp3-10.p7.

agents are clandestine agents¹⁰⁴⁸. If the answer is 'yes' to both then the actions qualify as acts of terrorism under the U.S. definition. This of course depends on one's view of non-combatants and clandestine. The answer to the first of these two questions can be considered as 'yes' on the grounds that Israel applies the laws of the land rather than the laws of war (and even if it had applied the latter the suspect has surrendered). The answer to the second can be considered yes, either on the grounds that *Shin Bet* is not legally constituted in Israeli law, or on the basis of individual accountability for the members of *Shin Bet* use false names. Otherwise the answer is no if either of these answers to these latter questions is 'no'.

The question of the clandestine nature of the perpetrator is also important to the application of Schmid and Jongman's definition which requires that the perpetrator of the politically motivated violence is "(semi-) clandestine". The author's view that the *Shin Bet* fulfil these criteria is even stronger here. However the use of 'moderate physical pressure' in order to extract vital information from suspected terrorists does not meet Schmid's demand that the main use of the violence is to generate a message to others, for surely the main intention is to gain information. It is possible that the torturers carrying out such action for other reason such as sending a message to stone throwers etc. by this form of violence, but as already noted this is highly unlikely.

¹⁰⁴⁸ U.S. State Department. *Patterns of Global Terrorism: 1993*. (Department of State Publication 10136, Office of the Secretary Office of the Coordinator for Counterterrorism.) states "For purposes of this definition, the term "noncombatant" is interpreted to include, in addition to civilians, military personnel who at the time of the incident are unarmed and/or not on duty. We also consider as acts of terrorism attacks on military installations or on armed military personnel when a state of military hostilities does not exist at the site, such as bombings against US bases in Europe or elsewhere".

Deportations.

A History.

Deportation (or 'expulsion' or 'exile') is generally defined as the compulsory departure of an individual from the country of which he or she is a national, and implies the compulsory loss of that person's national right¹⁰⁴⁹. The policy of deportation was introduced into Palestine by the British who deported Arabs to the Seychelles and Jews to Africa (including members of the *Irgun* in 1944)¹⁰⁵⁰. However it was through its incorporation of a newer piece of Mandate legislation -that of the D.E.R. 1945- that the Israeli's introduced the policy of deportation into Israel 1947, and into the West Bank twenty years later.

Generally speaking up until 9 November 1969 deportations of inhabitants of the West Bank were carried out across the bridges of the River Jordan. After this date, the Jordanian authorities prevented such deportations, and from then on the Israeli's took the deportees to the Arava -the desert between the Dead Sea and Eilat- where they were dispatched across the border near to a Jordanian army or police station in the East Bank. Then from 1974 the deportees were sent into Lebanon¹⁰⁵¹.

Since 1967 the Israelis have deported two distinct groups for 'counter-terrorist' reasons. The first are those political leaders who the Israeli's deem to have been active in fomenting acts of civil disobedience or encouraging 'terrorist' action i.e. incitement¹⁰⁵². The second are those

1049 Hiltermann J.R. *Israel's Deportation Policy In the Occupied West Bank and Gaza*. (Al-Haq (Law in the Service of Man). Ramallah.1986) Occasional Paper No. 2 1986. p2.

1050 B'Tselem. *Deportation of Palestinians from the Occupied Territories and the Mass Deportation of December 1992*. (B'Tselem. Jerusalem. June 1993) p15. Unfortunately B'Tselem do not explain under which piece of legislation this was carried out. O'Brien notes that two future prime ministers of Israel were deported, namely Ben-Gurion and Shamir. O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p256.

1051 The whole paragraph is based upon Cohen E. *Human Rights in the Israeli Occupied Territories 1967-82*. (Manchester University Press. Manchester. 1985.). p105-6. If it were not for the fact that the Israeli's dispute the status of the administered territory of the West Bank the view that those who were deported were only moved from one part of Jordan to another, might be credible.

1052 Cohen E. *Human Rights in the Israeli Occupied Territories 1967-82*. (Manchester University Press. Manchester. 1985.). p104. Maj. Gen (Res.). Gazit former Coordinator of activities in the Territories, noted that Israel "employed deportation against those

'terrorists' imprisoned for very long periods whose release the Israelis believe would entail a serious security risk¹⁰⁵³. Many of the latter had signed an agreement to leave country for ever, in return for a shortened prison sentence¹⁰⁵⁴. This classification of those deportations undertaken in order to 'counter-terrorism' into two groups is in line with Israeli views on the topic. In contrast, Palestinian sources complain that the Israeli's deport inhabitants of the West Bank who cannot prove they are native for one reason or another including Israel's refusal to issue identity cards to those concerned¹⁰⁵⁵. This deportation of 'infiltrators' was omitted because it is considered to be the equivalent of a state deporting aliens rather than the nationals of the land over whom the state claims the authority to rule.

Between September 1967 until early 1970 organisers of protests, petitions and strikes against both the annexation of East Jerusalem and changes in the educational, religious and legal systems were

who were involved or tried to be involved, in political activity" *Ha'aretz*, January 17, 1992 cited by B'Tselem. *Deportation of Palestinians from the Occupied Territories and the Mass Deportation of December 1992*. (B'Tselem. Jerusalem. June 1993.). p28. He also wrote that in September 1967, an order prohibiting incitement in the West Bank was published. The order barred "the holding of a procession or a meeting without the permission of the Military Commander, prohibited the raising of flags and political symbols without authorization, and banned the printing and/or publication of an announcement, placard, photograph, pamphlet or any printed matter with political significance, without permission from the Military Comander"... "Thus was created the legal foundation for the various punitive measures. The first was punitive exile" Gazit S. *The Stick and the Carrot*. (Hebrew) p275. cited by B'Tselem. *Deportation of Palestinians from the Occupied Territories and the Mass Deportation of December 1992*. (B'Tselem. Jerusalem. June 1993.). p29.

1053 Cohen E. *Human Rights in the Israeli Occupied Territories 1967-82*. (Manchester University Press. Manchester. 1985.). p104.

1054 Hiltermann J.R. *Israel's Deportation Policy In the Occupied West Bank and Gaza*. (Al-Haq (Law in the Service of Man). Occasional Paper No. 2. Ramallah.1986.). p1.

1055 An examination of the military orders catalogued by the J.M.C.C. reveals that Military Order 207 of 24 January 1968 required everyone to present an identity card when asked by a member of the security forces. Rabah J. and Fairweather N. *Israeli Military Orders in the Occupied Palestinian West Bank. 1967-1992*. (2nd.Ed. Jerusalem Media and Communications Centre. Jerusalem. 1995.). p28. According to Hilterman, Military Order No.329 of 1969, the 'Order Concerning Prevention of Infiltration (West Bank)', regulate the status of Palestinians who are said to have entered the area from outside without having obtained a permit to do so from the Israeli authorities. Hiltermann J.R. *Israel's Deportation Policy In the Occupied West Bank and Gaza*. (Al-Haq (Law in the Service of Man). Occasional Paper No. 2. Ramallah.1986.). p20. According to Al-Haq on 17th August 1988, three Trade Union leaders were issued with deportation orders while in administrative detention in Ansar III along with 22 others. All of them were "accused retroactively" of membership in popular committees which were not allowed outlawed until 18 August the following day. Al-Haq *Punishing The Nation: Human Rights Violations During the Palestinian Uprising. Dec.1987-Dec.1988*. (South End Press. Boston. 1990.). p125.

deported¹⁰⁵⁶. In the initial period "a large number" of political activists¹⁰⁵⁷ were deported from the West Bank for their purported allegiance to Jordan. Those who publicly expressed opposition to Israeli rule in the administered territories were also targeted, including schoolteachers and principles who protested against censorship of textbooks or organised strikes¹⁰⁵⁸. Rekhess and Susser estimate that such deportations from the West Bank decimated both the pro-Jordanian elite and the radical activists¹⁰⁵⁹. Following a period of calm on the West Bank from 1970 to 1973, the deportations were resumed with the renewal of the strikes and protests, only to die down again following the public outcry, at both home and abroad, that surrounded the deportation of two mayoral candidates in the April 1976 West Bank municipal elections before the Supreme Court could actually hold a scheduled hearing on the matter¹⁰⁶⁰. In contrast to over eleven hundred people being expelled during the first decade¹⁰⁶¹, between 1977 to 1979 there

¹⁰⁵⁶ Cohen E. *Human Rights in the Israeli Occupied Territories 1967-82*. (Manchester University Press. Manchester. 1985.). p104.

¹⁰⁵⁷ B'Tselem citing *Ha'aretz* January 17 1992. B'Tselem. *Deportation of Palestinians from the Occupied Territories and the Mass Deportation of December 1992*. (B'Tselem. Jerusalem. June 1993.). p18.

¹⁰⁵⁸ Cited by *Ha'aretz* January 17 1992. B'Tselem. *Deportation of Palestinians from the Occupied Territories and the Mass Deportation of December 1992*. (B'Tselem. Jerusalem. June 1993.). p18. Also In the words of Shlomo Gazit Gazit former Coordinator of activities in the Territories: "We employed deportation against those who were involved or tried to be involved, in political activity. We did not want to deal with political activists in Court. That would embarrass us. It was inconvenient for us, so we decided to get rid of them, and it proved itself. After a few deportations the level of political activity declined". Cited by *Ha'aretz* January 17 1992. B'Tselem. *Deportation of Palestinians from the Occupied Territories and the Mass Deportation of December 1992*. (B'Tselem. Jerusalem. June 1993.). p28.

¹⁰⁵⁹ Paper by Rekhess and Susser of the Shiloah Centre for Middle Eastern Studies, Tel Aviv University. December 1974, on the effects of deportation, cited by Cohen E. *Human Rights in the Israeli Occupied Territories 1967-82*. (Manchester University Press. Manchester. 1985.). p104.

¹⁰⁶⁰ The two, Dr Ahmed Hamzi el-Natshe and Dr Abdul Aziz Haj-Ahmed, were deported on 27 March. Cohen E. *Human Rights in the Israeli Occupied Territories 1967-82*. (Manchester University Press. Manchester. 1985.). p104.

¹⁰⁶¹ B'Tselem have a list of figures of punitive deportations of Palestinian residents of the Occupied Territories 1967-6, 1968-22, 1969-37, 1970-3 -785, 1974-96, 1975-40, 1976-3, 1977-0, 19780, 1979-1, 1980-3, 1981-0, 1982-0, 1983-0, 1984-1, 1985-29, 1986-10, No 19787 mentioned, 1988-32, 1989-26, 1990-0, 1991-8, 1992-415 The data are taken from reply of Defence Minister Ariel Sharon to a parliamentary interpellation by MK Mordechai Virshovsky: "How many deportation orders against residents of the territories] were issued in the period [from the Six day war until December 1982]?" *Knesset Record* Vol95, 1983 p1145. The data relate not to actual deportations, but to orders issued. Data for 1982-87 are taken from PHIRIC press release; "A History of Expulsion" December 17, 1992, and reflect the number of actual deportations. The data applying to the period from the start of the Intifada are

were no deportations, chiefly because of the opposition of the Prime Minister Menachem Begin¹⁰⁶². In 1979 his government replaced the D.E.R. within Israel itself, with the 'Emergency Powers (Detention) Law' which did not allow for deportation. Since then until September 1984 when Yitzhak Rabin, the then Defence Minister in the National Unity Government, revived the use of the policy in the West Bank only a handful of deportations from the administered areas were carried out¹⁰⁶³. Although Hofnung suggests that during this period of a Likud government "the authorities began turning a blind eye towards punishment meted out by Israeli settlers on the local population" and numerous military units used methods interpreted as collective punishments¹⁰⁶⁴. In a cabinet session on 4 August 1985, the Israeli government decided to revive deportation along with "other long-dormant measures" in order to "clamp down on terrorism and incitement in the administered areas."¹⁰⁶⁵. According to the then Minister of Defence Yitzhak Rabin:

"Those who are caught preparing, organising or carrying out terrorist acts -those people ought to be brought to court. But for those who instigate and call for participation in terror, even though they themselves are not active, administrative detention or deportation are the most effective means to cope with them, and I will not hesitate to use these measures. Not on a large scale, but mainly as a deterrent"¹⁰⁶⁶

provided by B'Tselem. B'Tselem. *Deportation of Palestinians from the Occupied Territories and the Mass Deportation of December 1992*. (B'Tselem. Jerusalem. June 1993.). p17 Ftn 15 . For other estimates see Cohen E. *Human Rights in the Israeli Occupied Territories 1967-82*. (Manchester University Press. Manchester. 1985.).p106.; Al-Haq *Punishing The Nation: Human Rights Violations During the Palestinian Uprising. Dec.1987-Dec.1988* .(South End Press. Boston. 1990.).p124.; O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p255.

1062 B'Tselem. *Deportation of Palestinians from the Occupied territories and the Mass Deportation of December 1992*. (B'Tselem. Jerusalem. June 1993.). p18.

1063 B'Tselem. *Deportation of Palestinians from the Occupied territories and the Mass Deportation of December 1992*. (B'Tselem. Jerusalem. June 1993.). p18.

1064 Hofnung M. *Democracy, Law and National Security in Israel*. (Dartmouth. Aldershot. 1996.). p265.

1065 Jerusalem Post. 5 Aug.1985. Cited by Hiltermann J.R. *Israel's Deportation Policy In the Occupied West Bank and Gaza*. (Al-Haq (Law in the Service of Man). Occasional Paper No. 2. Ramallah.1986.). p1.

1066 Jerusalem Post. 23 Aug 85. Cited by Hiltermann J.R. *Israel's Deportation Policy In the Occupied West Bank and Gaza*. (Al-Haq (Law in the Service of Man). Occasional Paper No. 2. Ramallah.1986.). p85.

B'tselem estimated that more than 1,000 Palestinians were deported in the first twenty years of Israel's occupation of the territories. The outbreak of the *intifada* led to an increase in the number of deportations and the government stated its intention to expel persons leading the uprising¹⁰⁶⁷. With the marked increase in the use of deportations during the *intifada* came an increase in the number of appeals and protracted hearings on petitions submitted to the High Court of Justice by deportation candidates. In light of these, the security establishment began questioning the effectiveness of deportations as a deterrent. As a result of this questioning, and the failure to come up with any acceptable means of reducing the number of appeals against them, the use of deportation orders declined. In between August 1988 and January 1991 no orders were carried out ¹⁰⁶⁸, and only 66 deportations were carried out within the slightly longer period of December 1987 to December 17 1992, whilst eleven deportation orders were rescinded and replaced by administrative detention orders in August of 1992¹⁰⁶⁹. However on December 17 1992 Israel deported 415 individual Palestinians of the occupied territories¹⁰⁷⁰, 280 of whom were residents of the West Bank¹⁰⁷¹. Sixteen of whom the Israelis admitted were mistakenly deported¹⁰⁷². Finally it is worth noting Hofnung's observation that despite Settler violence "no Jewish settler

¹⁰⁶⁷ National Lawyers Guild. *Treatment of Palestinians in Israeli-Occupied West Bank and Gaza: Report of the National Lawyers Guild*. (National Lawyers Guild. New York, 1988.). p61. The N.L.G. go on to note the expulsions of 10 trade unionists, journalists, students and businessmen who it said were uprising organising, citing P. Bennis 'Dual Power Emerging in Israel's Occupied territories' *Frontline*. Aug. 1. 1988. p13.

¹⁰⁶⁸ B'Tselem. *Deportation of Palestinians from the Occupied Territories and the Mass Deportation of December 1992*. (B'Tselem. Jerusalem. June 1993.). p19.

¹⁰⁶⁹ B'Tselem. *Deportation of Palestinians from the Occupied Territories and the Mass Deportation of December 1992*. (B'Tselem. Jerusalem. June 1993.) p20.

¹⁰⁷⁰ B'Tselem. *Deportation of Palestinians from the Occupied Territories and the Mass Deportation of December 1992*. (B'Tselem. Jerusalem. June 1993.) p20.

¹⁰⁷¹ B'Tselem. *Deportation of Palestinians from the Occupied Territories and the Mass Deportation of December 1992*. (B'Tselem. Jerusalem. June 1993.). p7.

¹⁰⁷² B'Tselem. *Deportation of Palestinians from the Occupied Territories and the Mass Deportation of December 1992*. (B'Tselem. Jerusalem. June 1993.). p54.

has ever been deported from the Territories"¹⁰⁷³, whilst no residents of Israel have been deported during this whole period 1967-1994¹⁰⁷⁴.

The Legalities.

Israel's deportations of residents (as opposed to aliens¹⁰⁷⁵) from both Israel and the West Bank were authorised by Regulation 112 (and 108) of the D.E.R. until the Emergency Powers Act (Detentions)¹⁰⁷⁶ abolished the practice within Israel in 1979.

In addition in 1992 the Order Concerning Temporary Deportations (Emergency Provisions) (Judea/Samaria) (No.1381) was issued by which 280 residents of the West Bank were deported within a group of 415 'personal' orders. However whilst this new enabling legislation was later deemed "null and void" by the H.C.J. the deportations were not, for the military order had also authorised 'temporary deportation orders' under Regulation 112(1)¹⁰⁷⁷. The latter of which declared that:

"The High Commissioner of Palestine shall have power to make an order under his hand (hereinafter in these regulations referred to as a "Deportation Order") for the deportation of any person from Palestine. A person in respect of whom a

¹⁰⁷³ Hofnung M. *Democracy, Law and National Security in Israel*. (Dartmouth. Aldershot. 1996.). p264. Although he notes that in a few cases, restriction orders have been issued against Jewish settlers, who were then not allowed to enter a defined area or particular town.

¹⁰⁷⁴ Based upon Hofnung's claim that no one had been deported since 1954. Hofnung M. *Democracy, Law and National Security in Israel*. (Dartmouth. Aldershot. 1996.). p264.

¹⁰⁷⁵ According to Hilterman, Military Order No.329 of 1969, the 'Order Concerning Prevention of Infiltration (West Bank)', regulate the status of Palestinians who are said to have entered the area from outside without having obtained a permit to do so from the Israeli authorities. Hiltermann J.R. *Israel's Deportation Policy In the Occupied West Bank and Gaza*. (Al-Haq (Law in the Service of Man). Occasional Paper No. 2. Ramallah. 1986.). p20.

¹⁰⁷⁶ B'Tselem. *Deportation of Palestinians from the Occupied Territories and the Mass Deportation of December 1992*. (B'Tselem. Jerusalem. June 1993). p16.

¹⁰⁷⁷ B'Tselem *Deportation of Palestinians from the Occupied Territories and the Mass Deportation of December 1992*. (Jerusalem. June 1993.) p p44. In addition nearly a month later an amendment No 1384 in the West Bank cancelled Section 49(a) of the former and gave the appeals committee authority to determine if its proceedings would be held *in camera*. B'Tselem *Deportation of Palestinians from the Occupied Territories and the Mass Deportation of December 1992*. (Jerusalem. June 1993.) p75 and generally for opinions that the Order was illegal.

Deportation Order has been made shall remain out of Palestine so long as the Order remains in force" 1078

The only limitation to which was provided by Regulation 108, which read that such:

"An order shall not be made by the High Commissioner [today the Israeli Minister of Defence] or by a Military Commander, as the case may be, if he is of the opinion that it is necessary or expedient to make the order for securing the public safety, the defence of Palestine, the maintenance of public order or the suppression of mutiny, rebellion or riot"1079

As noted earlier the legality of Israel's policy of deportation has been challenged both on the grounds that the incorporation of D.E.R. into both Israel and the West Bank was illegal, and because Article 9(1) of the Jordanian constitution outlawed deportation of the native inhabitants from the West Bank¹⁰⁸⁰. In addition its use in the West Bank has been challenged on the grounds that it is "generally agreed" that the prohibition of deportation in Article 49 of the Fourth Geneva Convention "should be interpreted strictly as prohibiting all deportations, whatever the reasons"¹⁰⁸¹. Whilst Article 6(b) of the Nuremberg Principles declared "deportation to slave labour or for any other purpose of civilian population of or in occupied territory" as a "war crime".

In the deportation process, formal charges are not brought against the deportee and no trial is held¹⁰⁸². There is however, both a right to appeal to an appeals board and to appeal as well as to the High Court of Justice. The recommendations of the former 'military objections

1078 Hiltermann J.R. *Israel's Deportation Policy In the Occupied West Bank and Gaza*. (Al-Haq (Law in the Service of Man).Occasional Paper No. 2. Ramallah,1986.). p10.

1079 Hiltermann J.R. *Israel's Deportation Policy In the Occupied West Bank and Gaza*. (Al-Haq (Law in the Service of Man).Occasional Paper No. 2. Ramallah,1986.). p9. As amended until 2nd March 1945.

1080 See second *Kawasme* case noted by Yahav D. (ed.). *Israel, The 'Intifada' and the Rule of Law*. (Israel Ministry of Defense. Tel Aviv. 1993.). p54.

1081 O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p256.

1082 Al-Haq. *Punishing A Nation: Human Rights Violations During The Palestinian Uprising (December 1987-December 1988)*. (South End Press. Boston.1990.). p126.

committee' are not binding¹⁰⁸³, and the H.C.J. merely seeks to ascertain whether the commander has stayed within the limits of the powers granted by law¹⁰⁸⁴. There is no right to see evidence on which the expulsion order is based¹⁰⁸⁵, and at no point does the Court publicly inquire into the substance of the allegations. Instead it merely addresses the question of whether it was issued in good faith. Writing in December 1988, *Al-Haq* wrote that the H.C.J. has not overturned a single deportation order¹⁰⁸⁶.

The Application Of the Various Definitions of (State) Terrorism.

'Counter-terrorist' deportations fulfil many of the qualifications necessary to gain the label of state terrorism under this author's definition. As with all the various acts under scrutiny within this chapter they involve the use or threat of violence. Secondly there seems little doubt that the Israeli defence forces, police and *Shin Bet* constitute either organisations in themselves, or form part of the organisation known as the State of Israel. Following this, one must ask 'is the act of deportations politically motivated?'. The answer is 'yes', for even if one disputes that all laws are politically motivated and reflect political choices, then surely one would acknowledge that those used to counter (political) terrorism are.

However the fulfilling of these three criteria does not automatically make the actions of a state terrorist, for the policy of deportation is authorised by the Defence (Emergency) Regulations. Although here it is

¹⁰⁸³ *Al-Haq. Punishing A Nation: Human Rights Violations During The Palestinian Uprising (December 1987-December 1988).* (South End Press. Boston.1990.). p126.

¹⁰⁸⁴ *Al-Haq. Punishing A Nation: Human Rights Violations During The Palestinian Uprising (December 1987-December 1988).* (South End Press. Boston.1990.). p126.

¹⁰⁸⁵ N.L.G. cite J.Hiltermann, 'Israel's Deportation Policy in the Occupied West Bank and Gaza' *Palestine Yearbook of International Law*. Vol. 3. p134. pp182-83. National Lawyers Guild. *Treatment of Palestinians in Israeli-Occupied West Bank and Gaza: Report of the National Lawyers Guild.* (National Lawyers Guild. New York.1988.). p62. Similarly *Al-Haq* wrote, "[B]oth the defendant and his or her lawyer are routinely denied access to it, this making its refutation an impossible task". *Al-Haq. Punishing A Nation: Human Rights Violations During The Palestinian Uprising (December 1987-December 1988).* (South End Press. Boston.1990.). p126.

¹⁰⁸⁶ *Al-Haq. Punishing A Nation: Human Rights Violations During The Palestinian Uprising (December 1987-December 1988).* (South End Press. Boston.1990.). p126.

worth noting that it is "generally agreed" that the prohibition of deportation in Article 49 of the Fourth Geneva Convention "should be interpreted strictly as prohibiting all deportations, whatever the reasons"¹⁰⁸⁷ and as such any deportations which occurred in the West Bank during June-October 1967 would be illegal if one believed the G.C.I.V. were in force then. As a result any such deportations would qualify for this author's label of state terrorism for the aim of such actions was also to deter others.

As for the period October 1967- May 1994, when deportation was definitely legal it would be also necessary to show that the State's violence was either, retrospective in its effects; so vague as to be unavoidable; based on ascribed criteria such as skin colour which one could not possibly change; or did not allow the victim to prove their innocence at a judicial trial. Deportation under the D.E.R. fulfils the latter criteria. The individual victim of this non-judicial measure has not been 'punished' in the classical sense of the term, for the State has no intention of bring the victim to trial in order to prove their guilt. In this way s/he will have been the arbitrary victim of the State's violence based merely on the 'opinion' of the relevant Israeli commander of the area, and qualifies for the attachment of the label "innocent" for they could not avoid the actions of the State.

Here it is worth noting that if there have been any retrospective deportations, as was allegedly the case with both the three administrative detainees in Ansar III who were deported after being "accused *retroactively* of membership in popular committees"¹⁰⁸⁸ on 17 August 1988; and the three who were deported before their deportation orders were issued during the mass deportation¹⁰⁸⁹ of December 1992, these too could constitute state terrorism precisely for that reason that they were retrospective. The Association of Civil Rights in Israel also claimed that the Order Concerning Temporary Deportations (Emergency Provisions) (Judea/Samaria) (No.1381) 1992 was not published before the mass deportation of 415 individuals were

¹⁰⁸⁷ O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p256.

¹⁰⁸⁸ Al-Haq. *Punishing A Nation: Human Rights Violations During The Palestinian Uprising (December 1987-December 1988)*. (South End Press. Boston.1990.). p125.

¹⁰⁸⁹ B'Tselem. *Deportation of Palestinians from the Occupied Territories and the Mass Deportation of December 1992*. (B'Tselem. Jerusalem. June 1993.). p49.

carried out under it¹⁰⁹⁰. Finally it is worth noting their claim that since 1980 the D.E.R. does not apply to Israel and therefore any deportation of individuals from gaols or detention camps within Israel were illegal as allegedly occurred during the mass deportation in December 1992¹⁰⁹¹.

In addition to these various requirements the final hurdle that needs to be cleared by all of the examples, is that the act of politically motivated violence must have been designed to influence the behaviour of others or as the definition puts it, "wider than the immediate 'innocent' victim(s)". Again if one is not convinced that all laws aim to do this then this criterion is surely fulfilled by Rabin's statement that he would not hesitate to use deportations "as a deterrent"¹⁰⁹². It is on the basis of fulfilling each stage of the process of applying the definition that deportations carried out in accord with the D.E.R. that Israel's counter-terrorist deportations can be described as acts of state terrorism according to this author's definition.

So what about the other definitions, do deportations qualify as acts of state terrorism in accordance with them?. The U.K.'s Prevention of Terrorism Act merely requires that the violence be politically motivated, which it is. Stohl and Lopez's definition requires that the intent of the political violence was to place a victim and/or audience in fear. Even if one does not agree with the claim that all of a State's laws do, it certainly seems to be the case with this counter-terrorist policy, a fact implicitly acknowledged by Rabin who said that he would use deportations "as a deterrent"¹⁰⁹³. The policy would also qualify under the definition derived from Israel's Prevention of Terrorism Ordinance, as the means of deportation imply a threat of acts of violence calculated

¹⁰⁹⁰ A.C.R.I cited by B'Tselem. *Deportation of Palestinians from the Occupied Territories and the Mass Deportation of December 1992*. (B'Tselem. Jerusalem. June 1993.). p80.

¹⁰⁹¹ A.C.R.I cited by B'Tselem. *Deportation of Palestinians from the Occupied Territories and the Mass Deportation of December 1992*. (B'Tselem. Jerusalem. June 1993.). p80.

¹⁰⁹² Jerusalem Post. 23 Aug 85. Cited by Hiltermann J.R. *Israel's Deportation Policy In the Occupied West Bank and Gaza*. (Al-Haq (Law in the Service of Man). Occasional Paper No. 2. Ramallah.1986.). p85.

¹⁰⁹³ Jerusalem Post. 23 Aug 85. Cited by Hiltermann J.R. *Israel's Deportation Policy In the Occupied West Bank and Gaza*. (Al-Haq (Law in the Service of Man). Occasional Paper No. 2. Ramallah.1986.). p85.

to cause injury or death to those resisting the deportation. Alternatively one could claim that deportation is not implicitly intended to contain such violence, but consistency would then demand that kidnappings carried out by insurgents would not qualify.

However such deportations carried out by Israel in accordance with the laws in force in either Israel or the West Bank do not constitute acts of terrorism under either Schmid and Jongman's definition of terrorism, or that held by the U.S. State department. This is because deportations are carried out overtly by the Israeli state, which means that this threat of political violence does not meet the requirement of being carried out by either sub-national groups or (at least semi-) clandestine agents.

Demolitions and Sealings of Buildings.

A History.

The policy of demolishing buildings from which insurgent violence emanated was introduced into Palestine by the British during the Arab Rebellion¹⁰⁹⁴ of 1936-39. Israel authorised demolitions by incorporating the same legislation used by the British -the D.E.R.1945- via article 11 of the Law and Administrative Ordinance of 1948. When Israel occupied the West Bank in 1967 it soon authorised and employed demolitions in the face of P.L.O. activities¹⁰⁹⁵ under the same piece of legislation, despite the fact that Article 53 of the G.C.I.V. prohibited the destruction of property "except where such destruction is rendered absolutely necessary by military operations"¹⁰⁹⁶. Although prior to this, the Israelis had carried out demolitions in these areas (and other parts of neighbouring Arab states¹⁰⁹⁷) as part of its cross border counter-terrorist raids.

However whilst the legislation has remained constant, both the 'provocation' deemed necessary for its use, and the extent of its usage has varied over the years. Between 1967 and the mid-1970s the practice of demolitions was widespread¹⁰⁹⁸. In the first year of Israeli rule, several uninhabited villages of the Jordan Valley were either completely or partially destroyed, as a means of preventing terrorists using them as a base for an attack, or for storing arms¹⁰⁹⁹. At least 1,000

¹⁰⁹⁴ Drawing legal authority from Article V(5) of the Palestine (Defense) Order in Council 1931, the British used home demolitions against Arabs. Simon D. 'The Demolition of Homes in the Israeli Occupied Territories'. *Yale Journal of International Law*. 19(1) Winter.1994 . pp1-79. p8.

¹⁰⁹⁵ Teveth S. *The Cursed Blessing* (London. Weindenfeld and Nicolson. 1970) p243-45 Cited by O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London.1991.). p243.

¹⁰⁹⁶ As quoted by Welchman L. *Israel's Demolition and Sealing of Houses in the Occupied Palestinian Territories*. (Al-Haq. Ramallah. 1993. Occasional Paper No.11.). p22.

¹⁰⁹⁷ O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London.1991.). p243.

¹⁰⁹⁸ No detailed records are provided. Al-Haq. *Punishing a Nation: Human Rights Violations During the Palestinian Uprising (December 1987-December 1988)*. (South End Press Boston.1990.). p133.

¹⁰⁹⁹ Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.). p96. According to the Israeli Information Centre, ."Houses have been demolished in the areas after belligerent acts were perpetrated by persons in them. But there is no Israeli policy of demolishing villages as Arab propaganda argues".

houses were demolished as a form of punishment during the first decade of the occupation¹¹⁰⁰. The punitive or preventative reasoning distinguishes such 'counter-terrorist' demolitions from those demolitions of illegally constructed buildings which some suggest have been used as a means of punishing Palestinians generally¹¹⁰¹.

In contrast to this initial period, the demolitions carried out between the late 1970s and the introduction of the 'iron fist' policy in 1985, were "largely confined" to cases in which Israeli soldiers or settlers have been killed or wounded in armed attacks by Palestinians¹¹⁰². This resulted in no more than an average of 20 demolitions a year¹¹⁰³ in the West Bank and Jerusalem between 1979-84. Estimates for the total number of houses demolished within all of the administered territories, vary according to the source. For example, a 1978 report by the I.C.R.C. stated that 1,224 buildings had been demolished or sealed since 1967- a figure shared by the Jerusalem Post¹¹⁰⁴, whilst *B'Tselem* ¹¹⁰⁵ put the figure for the number of complete demolitions or sealings of houses between 1967 and 1978 at more than 1,200. Israeli government statistics for the period 1967 to 1981, put the figure for houses demolished or

Israel Information Centre. *Human Rights in the Administered Areas*. (Israel Information Centre Information Briefing. August 1976.). p16.

1100 Al-Haq. *Punishing a Nation: Human Rights Violations During the Palestinian Uprising (December 1987-December 1988)*. (South End Press Boston.1990.).p133. According to the Israeli Information Centre, "houses are only demolished, then , to penalize acts of terrorism, as is , indeed, authorized by valid local law, if they have been used as terrorist bases". They put the figure at "a few hundred" after 8 years. Israel Information Centre. *Human Rights in the Administered Areas*. (Israel Information Centre Information Briefing. August 1976.). p16.

1101 B'Tselem. *Demolition and Sealing of Houses As a Punitive Measure In the West Bank and Gaza Strip During The Intifada*. (2nd. ed. B'Tselem. Jerusalem. August 1992.). p37.

1102 Al-Haq. *Punishing a Nation: Human Rights Violations During the Palestinian Uprising (December 1987-December 1988)*. (South End Press Boston.1990.). p134.

1103 B'Tselem's figures are 18,30,24,35,12,2 for the 6 years 1979-1984. B'Tselem *Demolition and Sealing of Houses As a Punitive Measure In the West Bank and Gaza Strip During The Intifada*. (2nd. ed . B'Tselem. Jerusalem. August 1992.). p15.

1104 I.C.R.C. Annual Report. 1978. cited by Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.).p97. Up to 1977, 1224 homes had been destroyed under this policy. (excluding East Jerusalem and the destroyed villages). Jerusalem Post 28 October 1977 cited by Metzger J., Orth M. and Sterzing C. *This Land is Our Land: The West Bank Under Israeli Occupation*. (Zed. London. 1983). p69.

1105 B'Tselem. *Demolition and Sealing of Houses As a Punitive Measure In the West Bank and Gaza Strip During The Intifada*. (2nd. ed B'Tselem. Jerusalem. August 1992.). p15.

sealed at 1,265 houses¹¹⁰⁶. Such figures however contrast greatly with one estimate¹¹⁰⁷ that put the total in approximately the same period at more than 20,000. This leaves one able to agree with B'Tselem's claim that there is no Israeli or Palestinian source capable of providing an accurate and updated figure for houses demolished and sealed as a punitive measure in the occupied territories¹¹⁰⁸.

Following the introduction of the 'Iron Fist' in May 1985, the policy of punitive demolitions was reinvigorated, although this time it was by accompanied by the more discriminate measure of sealing individual rooms (as well as whole houses) with cemented bricks or metal plates. Partial sealing was generally used when the 'terrorist hide-out' was either one apartment in a house tenanted by number of families having no connection with terrorism, or when the bulldozing or dynamiting of a house was rendered infeasible, for example because it might render a neighbouring one unsafe¹¹⁰⁹. The policy of demolitions reached a peak soon after the start of the *intifada*¹¹¹⁰, which was accompanied by a substantial reduction in the percentage of discriminating (partial) sealings¹¹¹¹. As William O'Brien put it: "[i]n combating the *intifada* the

¹¹⁰⁶ N.L.G. cite 'Peres Hits back at Premier on Demolition of Arab Houses' Jerusalem Post. Nov 24 1981. National Lawyers Guild. *Treatment of Palestinians in Israeli-Occupied West Bank and Gaza: Report of the National Lawyers Guild*. (National Lawyers Guild. New York.1988.). p65.

¹¹⁰⁷ Tanber wrote "Israeli has either blown up or sealed shut more than 20,000 Palestinian houses in the occupied territory since 1967". Tanber G.J. *Life Under Israeli Occupation*. (National Association of Arab Americans. Washington DC.1981.). p3. N.L.G. cite same figure from their 1978 report National Lawyers Guild. *Treatment of Palestinians in Israeli-Occupied West Bank and Gaza: Report of the National Lawyers Guild*. (National Lawyers Guild. New York.1978.)p65. National Lawyers Guild. *Treatment of Palestinians in Israeli-Occupied West Bank and Gaza: Report of the National Lawyers Guild*. (National Lawyers Guild. New York.1988.). p65.

¹¹⁰⁸B'Tselem. *Demolition and the Sealing of Houses As a Punitive Measure in the West Bank and Gaza Strip During the Intifada*. (2nd. Ed. B'Tselem. Jerusalem. August 1992.). p10.

¹¹⁰⁹ Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.). p96.

¹¹¹⁰ Simon D. 'The Demolition of Homes in the Israeli Occupied Territories'. *Yale Journal of International Law*. 19(1) Winter.1994. pp1-79. p7. He seems to base his view on figures provided by B'Tselem. *Violations of Human Rights in the Occupied Territories 1992-3*. (B'tselem. Jerusalem. 1994.).

¹¹¹¹ Al-Haq note that only 2% of buildings were sealed since 1987 and the culmination of their research as opposed to 47% of all cases prior to 1987. Al-Haq *Punishing The Nation: Human Rights Violations During the Palestinian Uprising. Dec.1987-Dec.1988* . (South End Press. Boston. 1990.). p135.

Israeli's have usually destroyed whole houses"¹¹¹². Between December 1987 and July 1989 there were 252 complete demolitions or sealings in the West Bank alone¹¹¹³.

The substantial increase in the number of 'demolition orders' of one type or another during the *intifada* was partially due to the fact that the Israeli's introduced a more permissive rationale. Previously it appears that there were only two criteria for demolishing or sealing off a house, namely the presence of either sabotage material or the saboteur, in the house¹¹¹⁴. Following the outbreak of the *intifada* the qualifying threshold of violence was generally reduced and on some occasions even eliminated. For example, in late January 1989 the Minister of Defence stated before the Knesset Security and Foreign Affairs Committee: "[w]e demolish the house of every person who confesses to throwing stones"¹¹¹⁵. Whilst *Al-Haq* reported that demolitions have been used against those suspected of incitement¹¹¹⁶. On the 22 March 1989 *Ha'aretz* reported that according to official sources, "the homes of wanted persons were demolished". A situation which according to *B'Tselem* ¹¹¹⁷ had been going on over the course of 1988 (see section on shootings). Interestingly Hofnung noted that "no house of a Jewish settler has ever been blown up or sealed"¹¹¹⁸. Whilst within Israel itself "houses belonging to citizens convicted of the most serious security offenses", have neither been demolished nor sealed

¹¹¹² O'Brien cites U.S. Department of State, Country Reports, 1988. p.1381; Country Reports, 1989, p1437. O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London.1991.). p243.

¹¹¹³ B'Tselem. *Demolition and Sealing of Houses As a Punitive Measure In the West Bank and Gaza Strip During The Intifada*. (2nd. ed. B'Tselem. Jerusalem. August 1992.). p17.

¹¹¹⁴ Cohen cites Interview with Major Tzvi Bar-El. (10 mar 1977); M.E.R. 1967-70). p360. Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.). p96.

¹¹¹⁵ B'Tselem cite Yossi Verter *Hadashot*, January 25 1989. B'Tselem. *Demolition and the Sealing of Houses As a Punitive Measure in the West Bank and Gaza Strip During the Intifada*. (2nd. Ed. B'Tselem. Jerusalem. August 1992.). p30.

¹¹¹⁶ Al-haq has documented at least 16 such cases in the villages of Bidya, Beita and Silat Harethiya, and they write that they have no record of its use previously. Al-Haq *Punishing The Nation: Human Rights Violations During the Palestinian Uprising. Dec.1987-Dec.1988* .(South End Press. Boston. 1990.). p135.

¹¹¹⁷ Article by Ori Nir in *Ha'aretz* March 22. 1989 cited by B'Tselem. *Demolition and the Sealing of Houses As a Punitive Measure in the West Bank and Gaza Strip During the Intifada*. (2nd. Ed. B'Tselem. Jerusalem. August 1992.). p31.

¹¹¹⁸ Hofnung M. *Democracy, Law and National Security in Israel*. (Dartmouth. Aldershot. 1996.). p264.

(including that of the person who killed Prime Minister Rabin, which falls outside of the period under scrutiny)¹¹¹⁹.

The Legalities.

In terms of legislation, demolitions (and sealing) of buildings made in order to both 'punish' or to 'prevent' acts of terrorism¹¹²⁰ are authorised within both Israel and the West Bank by Article 119(1) of the Defence Emergency Regulations¹¹²¹. It states:

"A Military Commander may by order direct the forfeiture to the Government of Palestine of any house, structure or land from which he has reason to suspect that any firearm has been illegally discharged, or any bomb, grenade or explosive or incendiary article illegally thrown, detonated, exploded or otherwise discharged, or of any house, structure or land situated in any area, town, village, quarter or street the inhabitants or some of the inhabitants of which he is satisfied have committed, or attempted to commit, or abetted the commission of, or been accessories after the fact to the commission of, any offence against these Regulations involving violence or intimidation or any Military Court offence; and when any house, structure or land is forfeited as aforesaid, the Military Commander may destroy the house or the structure or anything in or on the house, the structure or the land"¹¹²².

In practice the first step in the procedure is the confiscation of the structure or the land by order of the Military Commander. Although it is only after an order of forfeiture has been issued that the demolition or

¹¹¹⁹ Hofnung M. *Democracy, Law and National Security in Israel*. (Dartmouth. Aldershot. 1996.). p264.

¹¹²⁰ Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.).p96. There are of course other reasons for demolitions including those of illegal structures which even Israeli officials acknowledge is linked to their efforts to control the intifada. Al-Haq cite Jerusalem Post, 16 November 1988. Al-Haq. *Punishing a Nation :Human Rights Violations During the Palestinian Uprising (December 1987-December 1988)*. (South End Press Boston.1990.). p133.

¹¹²¹ Al-Haq. *Punishing a Nation: Human Rights Violations During the Palestinian Uprising (December 1987-December 1988)*. (South End Press. Boston. 1990.).p137. According to Simon these modified and enhanced the previous Emergency Regulations of 1931 and 1936 Simon D. 'The Demolition of Homes in the Israeli Occupied Territories'. *Yale Journal of International Law* . 19(1) Winter.1994. pp1-79. p15.

¹¹²² Simon D. 'The Demolition of Homes in the Israeli Occupied Territories'. *Yale Journal of International Law*. 19(1) Winter.1994 . pp1-79. p15.

sealing of the property on the land can occur. The process allows for the possibility for the Defence Minister to remit the forfeiture, thus creating at least in theory a period of time in which the person whose house is to be demolished may appeal to the Minister of Defence¹¹²³ and, since 1971, ultimately to the High Court of Justice¹¹²⁴. However because the whole effect of demolition was based on its immediacy this did not necessarily occur. The importance of the element of speed was expressed by the Co-ordinator of Government Administration in the West Bank, Brigadier-General S. Gazit, when he wrote:

"The effectiveness of the blowing-up of houses lies in the fact that it is an immediate punishment and if we want to deter somebody, we cannot stop and wait for the normal, legal machinery....If we want to deter terrorists the effects must be seen immediately by the population. Employing these Regulations, we have the possibility of doing this immediately"¹¹²⁵

¹¹²³ Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.).p102. However she goes on to say that due to the essence of immediacy in the deterrence process, the reality is that "There is no right of appeal", and cites Dayan's answer to the Knesset 13 February 1968 to that effect (see Footnote 158).

¹¹²⁴ Israel decided in 1971 to apply to the Occupied Territories some of the guarantees of personal rights found in Israeli domestic administrative and constitutional law. Meir Shamgar presented the legal policy as a commitment to "basic principles of natural justice as derived from the system of law existing in Israel" Shamgar M. 'Observance of International Law in the Administered Territories'. *Israel Yearbook on Human Rights* 1. (1971) pp262-277. p266-7. Simon D. 'The Demolition of Homes in the Israeli Occupied Territories'. *Yale Journal of International Law*. 19(1) Winter.1994 . pp1-79.p21. The court has decided 94 home demolition cases since it began to adjudicate the practice in 1979 (up until June 1991). It overruled 3. Simon D. 'The Demolition of Homes in the Israeli Occupied Territories'. *Yale Journal of International Law*. 19(1) Winter.1994 . pp1-79. p4.

¹¹²⁵ Gazit S. *Israel's Policy in the Administered Territories, 1969*.p5 cited by Playfair E. *Demolition and Sealing of Houses as a Punitive Measure in the Israeli -occupied West Bank*. (Al-Haq/ Law in the Service of Man. Ramallah. Occasional Paper No 5.1987.).p17. Al-Haq note that in The Jerusalem Post of 20 June 1988, the Military commander of the Central area (which includes the entire West Bank), General Amram Mitzna, stated that demolitions were being used because they were a "powerful deterrent action to signal and clarify that we will do everything and take all measures to stop this phenomenon of petrol bombs" Al-Haq *Punishing The Nation: Human Rights Violations During the Palestinian Uprising. Dec.1987-Dec.1988* .(South End Press. Boston. 1990.).p139. Playfair noted that "In the High Court decision of Sahwil -v- the Commander of the Judea and Samaria Region the judges ruled that demolition is "...an unusual punitive action whose main purpose is to deter[the] performance of similar acts" H CJ 434/79Sahwil -v- the Commander of the Judea and Samaria Region³⁴⁽¹⁾ PD 464 . Playfair E. *Demolition and Sealing of Houses as a Punitive Measure in the Israeli -Occupied West Bank*. (Al-Haq/ Law in the Service of Man. Ramallah. Occasional Paper No 5.1987.). p20.

In order to minimise the disturbance, such demolitions are usually carried out at night or during a daytime curfew. A closed military area is declared and until 1979 (if not until recently), occupants were typically given anything between half an hour to two hours to pack up and leave¹¹²⁶. Following the demolition or total sealing of the house, the forfeited land is frequently declared a 'closed area', which no one can enter or leave without permission, and the family may not even be allowed to remain on the land¹¹²⁷

After a legal challenge by the Association for Civil Rights in Israel in July 1989 the High Court restricted the immediacy of demolitions (but not sealings). Basing their ruling upon the right to be heard in Israeli law, the H.C.J. stated that unless there were operational military needs¹¹²⁸, the army would have to include in the demolition order:

"a warning which gives the recipient an opportunity to choose an attorney and appeal to the military commander within a specified period of time, after which, if he so desires, he will be given another specified period of time in which to appeal to the High Court of Justice, all before the order is carried out" ¹¹²⁹.

¹¹²⁶ Simon puts the date at 1979. Simon D. 'The Demolition of Homes in the Israeli Occupied Territories'. *Yale Journal of International Law*. 19(1) Winter.1994 . pp1-79.p Playfair E. *Demolition and Sealing of Houses as a Punitive Measure in the Israeli -Occupied West Bank*. (Al-Haq/ Law in the Service of Man. Ramallah. Occassional Paper No 5.1987.). p5-6.

¹¹²⁷ Playfair E. *Demolition and Sealing of Houses as a Punitive Measure in the Israeli -occupied West Bank*. (Al-Haq/ Law in the Service of Man. Ramallah. Occassional Paper No 5.1987.). p7.

¹¹²⁸ Is this the same as Al-Haq's comment on an early case August 1988 where IDF allowed appeal in all but 'exceptional circumstances'. "these "exceptions are so broad that they could be offered in justification of virtually every case of demolition which has so far occurred" Al-Haq. *Punishing a Nation: Human Rights Violations During the Palestinian Uprising (December 1987-December 1988)*. (South End Press. Boston.1990.).p138.ACRI case v Commander of Central Command 43(2) P.D. 529(1989) most orders have undergone judicial review.

¹¹²⁹ B'Tselem. *Demolition and the Sealing of Houses As a Punitive Measure in the West Bank and Gaza Strip During the Intifada*. (2nd. Ed. B'Tselem. Jerusalem. August 1992.). p12-13. B'tselem state that in the case of a house sealing , after the sanction has been approved by the legal advisor, it may be carried out immediately. In the case of demolition , the family must be allowed to appeal the decision...[once informed] the family may then appeal the decision within 48 hours before the military commander of their area...If the commander rejects the appeal, the family has an additional 48 hours to appeal to the HCJ...only one has been accepted. "The High Court...only examines the legality of the decision. In other words , did the commander act in a reasonable manner and base his decision on a sound factual foundation?" B'Tselem. *House Demolition and Sealing as a Form of Punishment in the West Bank and Gaza Strip*. (Follow up Report. B'Tselem. Jersualern. November 1990.). p5-6

Thus although the ruling merely restricted the demolition of homes without prior notice to urgent cases, the Court has reviewed almost all demolition orders since this decision. A fact which has resulted in a striking decrease in the annual number of applications and a corresponding decrease in the implementation of demolitions¹¹³⁰

Regulation 119 therefore authorises a demolition once the military commander is satisfied that an offence has been committed, even prior to the arrest of a suspect never mind their conviction by a court. Whilst Israel is keen to emphasise that "[n]o such action is taken" unless there is "a direct connection between the building and terrorist or other violent activities"¹¹³¹, and that this punitive measure is directed personally only against the person who has been culpable of the commission of a certain offence¹¹³². However in reality: "[t]he language of the regulations allows, in effect, for the demolition of any building in an area in which an inhabitant has committed a security offense"¹¹³³. Indeed legally there need be no connection between the offender and the property demolished or sealed, in that it is merely situated within the area. Whilst demolitions of the suspect's house, rather than the building where the offence took place, has occurred on a number of occasions despite the fact that the suspect had already been killed by the security forces themselves!¹¹³⁴.

¹¹³⁰After comparing the number of demolitions in the 12 months preceding the decision and the following 12 months Simon estimated a decline of 69%. Simon D. 'The Demolition of Homes in the Israeli Occupied Territories'. *Yale Journal of International Law*. 19(1) Winter.1994 . pp1-79. p36.

¹¹³¹ Military Advocate General of I.D.F. Dov-Shefi T. 'The Reports of the U.N. Special Committees on Israeli Practices in the Territories-A Survey and Evaluation' in Shamgar M. (ed.). *Military Government in the Territories Administered by Israel 1967-1980*. (Alpha Press. Jerusalem. 1982.). pp285-334. p301.

¹¹³² The Attorney General M. Samagar is reported to have said "demolition of houses is a punitive measure, according to local law, which is directed personally only against the person who has been culpable of the commission of a certain offence", speaking at Symposium on Human Rights held at Tel Aviv University on July 1-4, 1971, reported in IYHR 1971 p380. Cited by Welchman L. *Israel's Demolition and Sealing of Houses in the Occupied Palestinian Territories*. (Al-Haq. Ramallah. 1993. Occasional Paper No.11.). p31.

¹¹³³ Benvenisti M., Abu-Zayed Z. and Rubenstein D. *The West Bank Handbook: A Political Lexicon*. (The Jerusalem Post. Jerusalem. 1986.). p86.

¹¹³⁴ Writing in 1989 B'tselem claimed to know of at least 7 cases in which a family's home was sealed or demolished after the suspected family member was killed by security forces while committing the act which later formed the basis for the demolition or sealing. B'Tselem. *Demolition and the Sealing of Houses As a Punitive*

It is such reasoning which has led to demolitions been termed a collective punishment. Indeed this idea of punishment was 'admitted' by the High Court in the case of *Daghlas and other -v- the Military Commander of Judea and Samaria* :

"The aim of the regulation is "to achieve a deterrent effect" (HCJ 126/83, 434/70), and such an effect should naturally apply not only to the terrorist himself, but to those surrounding him, and certainly to family members living with him (HCJ 126/83). He should know that his criminal acts will not only hurt him but are apt to cause great suffering to his family'¹¹³⁵"

Moshe Dayan, the first Minister of Defence to implement the policy in the West Bank, preferred the term '*anisha svivatit*' meaning literally "vicinity" or "surrounding" punishment¹¹³⁶. The problem, of course, was how broad the category of guilt should be. In 1969 there was a noted increase in the categories of the guilty, a policy which came to be known as 'neighbourhood punishment', i.e. punishing local residents who either saw or knew in advance of terrorist activities and who failed to report incidents or give evidence about them afterwards¹¹³⁷.

The Application Of The Various Definitions Of (State) Terrorism.

As previously noted in the assessment of the policy of deportation, the fact that violence is committed for a political purpose by an organisation does not automatically make the act one of a state terrorist, for the policy of demolition, like that of deportation, is authorised by the Defence (Emergency) Regulations. However unlike the latter policy, demolitions could still be legal during the period that the G.C.I.V. were in place within the West Bank because Article 53 prohibited the

Measure in the West Bank and Gaza Strip During the Intifada. (2nd. Ed. B'Tselem. Jerusalem. August 1992.). p26.

¹¹³⁵ Playfair E. *Demolition and Sealing of Houses as a Punitive Measure in the Israeli -occupied West Bank*. (Al-Haq/ Law in the Service of Man. Ramallah. Occassional Paper No 5.1987.). p39.

¹¹³⁶ Simon D. 'The Demolition of Homes in the Israeli Occupied Territories'. *Yale Journal of International Law*. 19(1) Winter.1994 . pp1-79. p58.

¹¹³⁷ Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.). p91.

destruction of property "except where such destruction is rendered absolutely necessary by military operations"¹¹³⁸.

Legalised deportations could still fulfil the qualifying criteria demanded by my definition, in that the individual victim of this non-judicial measure has not been 'punished' in the classical sense of the term; the State had no intention of bring the victim to trial in order to prove their guilt. In this way s/he will have been the arbitrary victim of the State's violence based merely on the 'opinion' of the relevant Israeli commander of the area, and qualifies for the attachment of the label "innocent" for they could not have avoided the actions of the State. Although this decision to label such acts in this way is far more emotionally acceptable when the property demolished by the Israeli's does not belong to the perpetrator, as the D.E.R. allows.

The final hurdle that needs to be cleared by all of the examples, is that the act of politically motivated violence must have been designed to influence the behaviour of others or as the definition puts it, "wider than the immediate 'innocent' victim(s)". The State's desire to deter others through its use of this administrative punishment was expressed by Brigadier-General S. Gazit, whilst Co-ordinator of Government Administration in the West Bank, when he wrote:

"The effectiveness of the blowing-up of houses lies in the fact that it is an immediate punishment and if we want to deter somebody, we cannot stop and wait for the normal, legal machinery....If we want to deter terrorists the effects must be seen immediately by the population. Employing these Regulations, we have the possibility of doing this immediately"¹¹³⁹

It is on the basis of fulfilling each stage of the process that demolitions carried out in accord with the D.E.R. that Israel's counter-terrorist demolitions can be described as acts of state terrorism according to this author's definition. The comments of Gazit also provide the basis for labelling any illegal demolitions which occurred in the West Bank

¹¹³⁸ As quoted by Welchman L. *Israel's Demolition and Sealing of Houses in the Occupied Palestinian Territories*. (Al-Haq. Ramallah. 1993. Occasional Paper No.11.). p22.

¹¹³⁹ Gazit S. *Israel's Policy in the Administered Territories, 1969*. cited by Playfair E. *Demolition and Sealing of Houses as a Punitive Measure in the Israeli -occupied West Bank*. (Al-Haq/ Law in the Service of Man. Ramallah. Occasional Paper No 5.1987.). p38.

during the period that the Geneva Convention was in force. Any demolitions which were not absolutely necessary at the time for military purposes would have been illegal.

Do demolitions qualify as acts of state terrorism in accordance with the other proposed definitions?. The U.K.'s Prevention of Terrorism Act merely requires that the violence be politically motivated, which it is. Stohl and Lopez's definition require that the intent of the political violence was to place a victim and/or audience in fear. Even if one does not agree with the claim that all of a State's laws do, it certainly seems to be the case with this counter-terrorist policy, a fact implicitly acknowledged by both the comments of Gazit and the H.C.J. which suggest that this criteria has been met.

The policy of demolitions would not however qualify under the definition derived from Israel's Prevention of Terrorism Ordinance. This is because the process of demolitions does not involve a use of violence directed against persons as the Israeli derived definition requires. Similarly, such demolitions carried out by Israel in accordance with the laws in force in either Israel or the West Bank do not constitute acts of terrorism under Schmid and Jongman's definition of terrorism, for it required that the victims were human. even without this demolitions would not have qualified because they are carried out overtly by the Israeli state, which means that this threat of political violence does not meet the requirement of being carried out by clandestine agents which would also mean they would not be labelled as terrorism by the U.S. definition.

Administrative Detentions.

A History.

Administrative detention which is also known as 'preventative detention', or 'detention without charge' or trial¹¹⁴⁰ has been defined as:

"the internment of individuals by administrative proceedings -that is, not on the basis of conviction and sentence by a criminal court following regular criminal proceedings, nor on the basis of a judicial order of arrest issued with a view to initiate such proceedings. Administrative detention is the confinement of individuals by the administrative authority according to an administrative process".¹¹⁴¹

The administrative detention of both Arabs and Jews¹¹⁴² was carried out in Palestine under the British Mandate, indeed on 29 June 1946 -a day which would become known as "Black Sabbath"¹¹⁴³- 2,718 people were detained in this way. Initially Regulation 111 of the Defence (Emergency) Regulations 1945 enabled any military commander to take anyone into administrative detention for up to a year, although in 1946 the limitation on the duration was annulled¹¹⁴⁴. The provisions of this later piece of legislation were incorporated into Israeli law in 1947, and

¹¹⁴⁰ Playfair E. *Administrative Detention in the Occupied West Bank*. (Law in the Service of Man. Ramallah. 1986. Occasional paper No 1.). p1. Also Al-Haq. *Punishing a Nation: Human Rights Violations During the Palestinian Uprising (December 1987-December 1988)*. (South End Press. Boston.1990.). p128. B'Tselem. *Detained Without Trial: Administrative Detention in the Occupied Territories Since the Beginning of the Intifada*. (B'Tselem. Jerusalem . October 1992.). For the term 'detention without charge' see National Lawyers Guild. *Treatment of Palestinians in Israeli-Occupied West Bank and Gaza: Report of the National Lawyers Guild*. (National Lawyers Guild. New York. 1988.). p51.

¹¹⁴¹ Hadar Z. 'Administrative Detentions Employed By Israel' *Israeli Yearbook of Human Rights* Vol. 1 (1971). pp283-289. p283. Also cited by Israel National Section of the International Commission of Jurists. *The Rule of Law in the Areas Administered by Israel*. (ICJ. Tel Aviv. 1981.).p71

¹¹⁴² B'Tselem. *Detained Without Trial: Administrative Detention in the Occupied Territories Since the Beginning of the Intifada*. (B'Tselem. Jerusalem . October 1992.). p20

¹¹⁴³ B'Tselem. *Detained Without Trial: Administrative Detention in the Occupied Territories Since the Beginning of the Intifada*. (B'Tselem. Jerusalem . October 1992.). p21.

¹¹⁴⁴ B'Tselem. *Detained Without Trial: Administrative Detention in the Occupied Territories Since the Beginning of the Intifada*. (B'Tselem. Jerusalem . October 1992.). p19.

were used in 1951 against ultra-orthodox Jews suspected of intention to commit a terrorist act¹¹⁴⁵, and in 1956 against Israeli Arabs¹¹⁴⁶. Twenty years later, Israel authorised this policy within the West Bank via both Article 67 of the Order Concerning Security Regulations (the annex to Proclamation No 3), and the D.E.R. which constituted the law on the same day¹¹⁴⁷.

According to the Israel authorities, an administrative detention order could only be issued only for reasons of state or public security. In the words of Israel's Attorney General:

"It should be emphasised that administrative detention is not intended as punishment for violations committed, but rather to prevent the perpetration of illegal acts by the individual concerned..."¹¹⁴⁸.

Thus according to this Attorney-General, Israel resorted to such an administrative measure:

"only in those circumstances where normal judicial procedures cannot be followed because of the danger to lives of witnesses or because secret sources of information cannot be revealed in open court..."¹¹⁴⁹

¹¹⁴⁵ B'Tselem. *Detained Without Trial: Administrative Detention in the Occupied Territories Since the Beginning of the Intifada*. (B'Tselem. Jerusalem . October 1992.). p24.

¹¹⁴⁶ B'Tselem. *Detained Without Trial: Administrative Detention in the Occupied Territories Since the Beginning of the Intifada*. (B'Tselem. Jerusalem . October 1992.). p26.

¹¹⁴⁷ Article 2 of Proclamation No.2 stated that: "The law which existed in the area on 7 June, 1967 shall remain in force to the extent that it does not contain anything incompatible with this Proclamation, any other Proclamation or Order which will be enacted by me, and subject to such modifications as may result from the establishment I.D.F. Government in the Area."Yahav cites Collection of Proclamations, Orders and Appointments (Judea and of Smaria), 1967.p3. Yahav D. (ed.). *Israel, The 'Intifada' and the Rule of Law*. (Israel Ministry of Defense. Tel Aviv. 1993.). p51. If one disputes this the D.E.R. was introduced on 20 February 1968 via The (military) Order Concerning Interpretation (Additional Protocol) (No.5) (Judea and Samaria) (No.224) 1968 explicitly stated that the Defence Regulations are valid 20 February 1968 J.Rabah and N.Fairweather *Israeli Military Orders in the Occupied Palestinian West Bank 1967-1992* (Jersualem Media and Communications Centre. Second Edition. Jerusalem. 1995.). p30

¹¹⁴⁸ Public statement of Attorney General 26 January 1986, cited by Al-Haq. *Punishing a Nation: Human Rights Violations During the Palestinian Uprising (December 1987-December 1988)*. (South End Press. Boston.1990.). p129

¹¹⁴⁹ Public statement of Attorney General 26 January 1986 cited in O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London.1991.).p250. Israel's Attorney General Itzhak Zamir issued guidelines in 1982 saying "Administrative

Therefore typically such orders were "issued against leaders or members of terrorist organisations"¹¹⁵⁰. According to *Al-Haq* during the first thirteen years of the occupation, the Israeli authorities consistently resorted to the administrative detention of Palestinian residents of the West Bank *in lieu* of providing them with formal charges and fair trials¹¹⁵¹. *B'Tselem* estimated that there were 1,261 Palestinian residents of the occupied territories in administrative detention in the spring of 1970, with over 220 of them having been held for over a year¹¹⁵². In 1971 the former figure is estimated to have dropped to 445 and hovered at around 40 a year between 1973 and 1977¹¹⁵³. In the early 1980s the practice was discontinued and the last detainee -Ali Awwad al-Jammal- was finally released on 2 March 1982 after serving six years and nine months without charge¹¹⁵⁴. Although according to Playfair this drop in the use of administrative detentions coincided with an increase in the use of 'house arrests' that is similar administrative orders that confined the victim to their house or village¹¹⁵⁵.

detention is meant not as a punitive but only as a preventative measure.....Where there is sufficient good evidence for a conviction in such proceedings this will not by itself justify administrative detention". (No other reference) Playfair E. *Administrative Detention in the Occupied West Bank*. (Law in the Service of Man. Ramallah. 1986. Occasional paper No 1.).pp13-14

1150 Public statement of Attorney General 26 January 1986 cited by *Al-Haq*. *Punishing a Nation: Human Rights Violations During the Palestinian Uprising* (December 1987-December 1988). (South End Press. Boston.1990.). p129. Also cited by O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London.1991.).p250. See also Israel Information Centre who wrote,"Only those who took part in terrorist actions or gave aid to terrorists may be detained under Regulation 111 of Mandatory's Emergency Regulations of 1945", Israel Information Centre. *The Administered Areas*. (Israel Information Centre Information Briefing 10. Jerusalem. September. 1973.).p21

1151 *Al-Haq*. *Punishing a Nation: Human Rights Violations During the Palestinian Uprising* (December 1987-December 1988). (South End Press. Boston.1990.). p128 .

1152 *B'Tselem* cite *Knesset Record Vol.57 pp1472, 1867*. *B'Tselem*. *Detained Without Trial: Administrative Detention in the Occupied Territories Since the Beginning of the Intifada*. (*B'Tselem*. Jerusalem . October 1992.). p26

1153 *B'Tselem* cite Hofnung M. *Israel - Security Needs vs. The Rule of Law, 1948-1991* (Jerusalem, 1991.).(Hebrew.) p318 *B'Tselem*. *Detained Without Trial. Administrative Detention in the Occupied Territories Since the Beginning of the Intifada*. (Jerusalem. October. 1992) p26

1154 He was then placed under house arrest until February 1984. Playfair E. *Administrative Detention in the Occupied West Bank*. (Law in the Service of Man. Ramallah. 1986. Occasional paper No 1.). p4.

1155 Playfair E. *Administrative Detention in the Occupied West Bank*. (Law in the Service of Man. Ramallah. 1986. Occasional paper No 1.). p5. These other administrative orders are not examined here for generally speaking the same rules apply to the labelling.

Then on the 4 August 1985 the Israeli cabinet decided to revive the use of the policy, albeit in a slightly amended form¹¹⁵⁶, along with other strong measures "to clamp down on terrorism and incitement"¹¹⁵⁷ as part of what would be known as the 'iron fist' strategy¹¹⁵⁸. Between August 1985 and 9 December 1987, at least 316 Palestinians from the occupied territories were administratively detained; of these, 74 were still interned when the *intifada* began¹¹⁵⁹. By 1990 the number of Palestinians estimated to be held under administrative detention¹¹⁶⁰ ranged from 3,000-4,000 to 6,000. Whilst the Knesset member Dedi Zucker using the 'conservative' figure of 1,900 administrative detainees, noted that this meant "one out of every 200 men over the age of 18" from the Occupied Territories was imprisoned without charge or trial¹¹⁶¹

The Legalities.

The Law in Israel.

Until 1980, Article 111 of the D.E.R. authorised administrative detentions within Israel. It stated:

¹¹⁵⁶ Regional Commanders of the rank of colonel or above were given this right, and district commanders could now issue detention orders for 96 hours which could be extended by the regional commander, no longer subject to automatic review.

¹¹⁵⁷ Playfair E. *Administrative Detention in the Occupied West Bank*. (Law in the Service of Man. Ramallah. 1986. Occasional paper No 1.). p1.

¹¹⁵⁸ O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p249.

¹¹⁵⁹ Al-Haq. *Punishing a Nation: Human Rights Violations During the Palestinian Uprising (December 1987-December 1988)*. (South End Press. Boston.1990.). p128. Also O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London.1991.). p249. He cites Al-Haq *Punishing a Nation: Human Rights Violations During the Palestinian Uprising December 1987-December 1988*. (Law in the Service of Man. Ramallah. 1988.). p212.

¹¹⁶⁰ O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London.1991.). p250. Although in his footnote no. 158 p269, he writes that Al -Haq estimated detainees at 3-4,000. *Punishing a Nation:Human Rights Violations During the Palestinian Uprising December 1987-December 1988*. (Law in the Service of Man. Ramallah. 1988.). pp346-47. Hilberman estimated 6,000. Hilberman J.R. 'Human Rights and the Mass Movement: The First Year of the Intifada' *Journal of Palestine Studies* 18 (1987). p130. The U.S. State department reported a peak of 2,600 in September 1988. Country Reports, 1988, p1379.

¹¹⁶¹ Al-Haq. *Punishing a Nation: Human Rights Violations During the Palestinian Uprising (December 1987-December 1988)*. (South End Press. Boston.1990.). p131-2. Citing Letter of Dedi Zucker to Israeli Bar association and the heads of the country's law faculties on 18 May 1988, reported by Jerusalem Post.19 May 1988.

"A Military Commander may by order direct that any person shall be detained for any period not exceeding one year in such place of detention as may be specified by the Military Commander in the order"¹¹⁶².

This wording was limited only by the conditions contained within Regulation 108, which stated that a such a detention order¹¹⁶³:

"shall not be made by the High Commissioner or by a Military Commander.....in respect of any person unless the High Commissioner or Military Commander is of the opinion that it is necessary or expedient to make the order for securing the public safety, the defence of Palestine, the maintenance of public order, or suppression of mutiny, rebellion or riot"¹¹⁶⁴.

The other relevant part of the Regulations dealing with administrative detentions was section 111(3) which allowed any member of the Israeli police force or I.D.F. to arrest, and convey to the place of detention specified in the order, any person in respect of whom a order has been made in accordance with Regulation 111(1)¹¹⁶⁵. Also, Section 111(8) allowed the Military commander to delegate any powers relating to the

¹¹⁶² Rudolph H. *Security, Terrorism and Torture. Detainees Rights in South Africa and Israel: A Comparative Study* (Juta and Co. Cape Town. 1984.).p62. "A Military Commander is, according to Regulations 2 and 6 [of the DER], an officer appointed for any area or place by the Chief of the General Staff, with the approval of the Minister of Defense.At any time the Chief of the General Staff may himself exercise the powers or duties vested in or imposed upon a Military Commander. There are four Military Commanders in Israel besides the chief of the General Staff: they are the Generals of the three regional Commands, into which the country is divided, and the General who is the Commander of the Navy in respect of the territorial waters and the ports of Israel" Hadar Z. 'Administrative Detentions Employed By Israel' *Israeli Yearbook of Human Rights* Vol. 1 (1971). pp283-289. p284

¹¹⁶³As well as a restriction order (Regulation 109), a police supervision order (Regulation 110) or deportation order (Regulation112).

¹¹⁶⁴ Rudolph H. *Security, Terrorism and Torture. Detainees Rights in South Africa and Israel: A Comparative Study* (Juta and Co. Cape Town .1984.). p62.

¹¹⁶⁵ Rudolph H. *Security, Terrorism and Torture. Detainees Rights in South Africa and Israel: A Comparative Study* (Juta and Co. Cape Town .1984.). Regulation 111(5) made the detainee liable to arrest for committing various offences listed in 111(7). These included not only failing to obey the order 111(7) (a), or breaking the penal code, but also other offences such as 'shouts or makes unnecessary noise within a place of detention' 111(7)(d).

Regulation¹¹⁶⁶. These legal powers were circumscribed by a series of carefully drawn rules and established practices¹¹⁶⁷.

The broad language of the regulation remained until 5 March 1979 when it was replaced by the 'Emergency Powers (Detention) Law' 5739-1979 (or E.P.D.L.). This piece of legislation altered the legal basis for administrative detentions. For the purpose of this assessment the most substantial change was contained within Section 2(a). It demanded that the Minister of Defence had to have "reasonable cause to believe" that reasons of state or public security required the detention. According to Rudolph this provided an "objective" basis of judicial review to the new appeals procedure.¹¹⁶⁸ The other changes worth noting were 'merely' alterations to either the issuing of orders¹¹⁶⁹, the length of the

¹¹⁶⁶ Rudolph H. *Security, Terrorism and Torture. Detainees Rights in South Africa and Israel: A Comparative Study* (Juta and Co. Cape Town .1984.). p71.

¹¹⁶⁷ Rudolph H. *Security, Terrorism and Torture. Detainees Rights in South Africa and Israel: A Comparative Study* (Juta and Co. Cape Town. 1984.). p72. The 'Correlating Instructions while Executing the Defence [Emergency] Regulations' issued by General Staff required the Chief of Staff's approval for all preventative (i.e. non investigative) 'administrative detentions' and the approval of the Chief of the Department of the General Staff that would be used as the first stage in an investigative process Rudolph H. *Security, Terrorism and Torture. Detainees Rights in South Africa and Israel: A Comparative Study* (Juta and Co. Cape Town .1984.). p72. See B.Bracha B. 'Restriction of Personal Freedom Without Due Process of Law According to the Defence (Emergency) Regulations 1945' *Israel Yearbook of Human Rights* Vol. 8 1978 pp296-323. p307. Then the 'Instructions of the Attorney General' which provided merely a guide to the Chief of Staff and Military Commanders directed that such administrative detentions had to be of a preventative rather than punitive nature', as well as demanded that there was no less severe alternative. Rudolph H. *Security, Terrorism and Torture. Detainees Rights in South Africa and Israel: Comparative Study* (Juta and Co. Cape Town.1984). p73. See Instructions of the Attorney General 21.927 para 3 and 10a, 10b. These included internal army orders which limited the authority to issue an administrative detention order to the Chief of General Staff and the Military Commanders of Israel's three regional commands and the Commander of the Israeli Navy. Hadar Z. 'Administrative Detentions Employed by Israel' *Israeli Yearbook of Human Rights* Vol.1.(1971). pp283-289. p284. However only the former had the authority to detain an individual without trial for periods exceeding one month. B'Tselem. *Detained Without Trial: Administrative Detention in the Occupied Territories Since the Beginning of the Intifada*. (B'Tselem. Jerusalem. October 1992.). p10. Each had power for up to 6 months; a detention for a period longer than this required Chief of Staff's approval. Except for East Jerusalem where it was three. Rudolph H. 'The Judicial Review of Administrative Detention Orders in Israel' *Israel Yearbook on Human Rights*. Vol. 14. 1984. pp148-181. p150). In addition the Military Commanders could only exercise their powers following an advisory committee's recommendation to that effect. Rudolph H. *Security, Terrorism and Torture. Detainees Rights in South Africa and Israel: A Comparative Study* (Juta and Co. Cape Town.1984.). p72.

¹¹⁶⁸ Rudolph H. *Security, Terrorism and Torture. Detainees Rights in South Africa and Israel: A Comparative Study* (Juta and Co. Cape Town.1984.). p97.

¹¹⁶⁹ For example, Section 2 (a) limited the issuing of an order solely to the Ministry of Defence rather than to its Military Commanders, with the exception of the Chief of

detention¹¹⁷⁰ and the (non-judicial) appeals procedure¹¹⁷¹. Finally in 1982 the 'Instructions of the Attorney General' to the Chief of Staff and Military Commanders, directed that such administrative detentions had to be of a preventative rather than punitive nature', as well as demanding that there was no less severe alternative¹¹⁷².

Within The West Bank.

Here administrative detention was initially authorised by both Article 67 of the Order Concerning Security Regulations (1967) which came as an annex to Proclamation No 3, and Article 111 of the D.E.R. Writing in 1971, Hadar, claimed that administrative detentions were not effected under the said Regulation 111 within the territories administered by Israel. Instead they were effected in the Territories under the Order Concerning Security Instructions¹¹⁷³. Article 67(1) of the O.C.S.R. stated:

Staff who was given the authority to detain someone for 48 hours in section 2(c). Shetreet S. 'A Contemporary Model of Emergency Detention Law'. *Israel Yearbook on Human Rights*. Vol.14. 1984. pp182-220. p186.

¹¹⁷⁰ Section 2 (b) limited the period of detention to a maximum of 6 months (though this could be renewed) and Section 4 stipulated that detainees be brought before the President of an Israeli District Court within 48 hours of arrest and subsequently at least once every three months the latter in accordance with Section 5(a). Shetreet S. 'A Contemporary Model of Emergency Detention Law'. *Israel Yearbook on Human Rights*. Vol.14. 1984. pp182-220. p186.

¹¹⁷¹The legally binding decision of the President of an Israeli District Court could then be appealed to the Israeli Supreme court. B'Tselem. *Detained Without Trial: Administrative Detention in the Occupied Territories Since the Beginning of the Intifada*. (B'Tselem. Jerusalem . October 1992.). p10. It was obligated to quash the detention order if "it has been proved to him that the reasons for which it was made were not objective reasons of state security or public security or that it was made in bad faith or from irrelevant considerations"(section 4(c)). However whilst there was now a right to attend the hearing on appeal the detainee's side could be excluded from hearing evidence on grounds of state or public security. Rudolph H. *Security, Terrorism and Torture. Detainees Rights in South Africa and Israel: A Comparative Study* (Juta and Co. Cape Town .1984.). p99.

¹¹⁷² Rudolph H. *Security, Terrorism and Torture. Detainees Rights in South Africa and Israel: A Comparative Study* (Juta and Co. Cape Town .1984.).p73. See Instructions of the Attorney General 21.927 para 3 and 10a, 10b.

¹¹⁷³ Hadar Z. 'Administrative Detentions Employed by Israel'. *Israel Yearbook on Human Rights*. Vol.1 1971. pp283-289. p287.

"A military commander, or whoever is authorized to do so on his behalf, may direct by an order that a person shall be held in a place of detention which the military commander shall designate in the order"¹¹⁷⁴

In May 1970 'Military Order No.378 (Judea /Samaria)' contained a new O.S.C.R. which specifically changed Regulation 111(4) in order to bring it in line with (Article 78(2) of) the Fourth Geneva Convention¹¹⁷⁵. The new O.C.S.R. incorporated Regulation 111(1) verbatim¹¹⁷⁶. The article which now authorised administrative detention was Article 87, part a of which stated that:

"A Military Commander, or any person authorized by him in that behalf, may order direct that a person shall be detained in such place of detention as may be specified in the order"¹¹⁷⁷.

This authority was limited by Article 84A which declared that, "No Military commander may exercise (this) authority unless he believes it to be necessary for definitive security reasons"¹¹⁷⁸. Although all detentions automatically went to appeals board after a period of six months, and after 1971 could be appealed to the H.C.J.¹¹⁷⁹. Since 1970

¹¹⁷⁴ United Nations Special Working Group of the Human Rights Commission Report. UN/E/ CN.4/1016. p29

¹¹⁷⁵ Israel National Section of the International Commission of Jurists. *The Rule of Law in the Areas Administered by Israel*. (ICJ. Tel Aviv. 1981) p72. Article 78(2) of the G.C.IV. said "This [detention] procedure shall include the right of appeal for the parties concerned. Appeals shall be decided with the least possible delay. In the event of the decision being upheld, it shall be subject to periodical review, if possible every six months, by a competent body set up by the said power". Cited by Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.). p123. From now on the detainees detention was automatically reviewed every six months regardless of whether they had appealed.

¹¹⁷⁶ Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.). p122.

¹¹⁷⁷ Interestingly the Israeli ICJ adds the requirement of reasonableness. "Where the Regional Commander has reasonable ground for believing that the detention of a person is necessary for reasons of regional or public security, he may, by an order signed by himself, order the detention of that person, for the duration of the period stated therein, which shall not exceed a period for six months." Israel National Section of the International Commission of Jurists. *The Rule of Law in the Areas Administered by Israel*. (ICJ. Tel Aviv. 1981).p72.

¹¹⁷⁸ Playfair E. *Administrative Detention in the Occupied West Bank*. (Law in the Service of Man. Ramallah. 1986. Occasional paper No 1.). p12.

¹¹⁷⁹ Israel decided in 1971 to apply to the Occupied Territories some of the guarantees of personal rights found in Israeli domestic administrative and constitutional law. Meir Shamgar presented the legal policy as a commitment to "basic principles of natural justice as derived from the system of law existing in Israel" Shamagar M.

the legislation authorising administrative detentions contained within the O.C.S.R. has been amended on numerous occasions¹¹⁸⁰. For example in January 1980 Military Order No.815 brought the relevant powers into line with the E.P.D.L. which had just been introduced into Israel¹¹⁸¹, most notably the concept of 'reasonableness'. These new provisions specified grounds on which administrative detention orders could be made, introduced a new judicial review procedure, restricted delegation of powers and made other refinements to the law¹¹⁸². However in March 17th 1988, three months after the beginning of the *intifada*, the I.D.F. suspended the liberal changes which had followed the 1978 Camp David accords contained within the 1980 order, and issued 'Military Order Concerning Administrative Detainees (Temporary Provisions) (No. 1229)(Judea Samaria)' which reinstated the *status quo ante* ¹¹⁸³.

'Observance of International Law in the Administered Territories'. *Israeli Yearbook of Human Rights* Vol.1.(1971) p266-7. Also Simon D. 'The Demolition of Homes in the Israeli Occupied Territories'. *Yale Journal of International Law*. 19(1) Winter.1994 . pp1-79. p21.

¹¹⁸⁰ Other amendments include Military Orders 1254 (7 September 1988), 1270 (16 March 1989), 1283 (13 September 1989), 1299 (16 March 1990), 1315A (23 September 1990) and 1351 (17 March 1991). For most of these see Rabah J. and Fairweather N. *Israeli Military Orders in the Occupied Palestinian West Bank. 1967-1992*. (2nd.Ed. Jersualem Media and Communications Centre. Jersualem. 1995.).

¹¹⁸¹ Playfair E. *Administrative Detention in the Occupied West Bank*. (Law in the Service of Man. Ramallah. 1986. Occasional paper No 1.). p10.

¹¹⁸² Playfair E. *Administrative Detention in the Occupied West Bank*. (Law in the Service of Man. Ramallah. 1986. Occasional paper No 1.). p11. Now Military commanders of the three regions could implement orders and detainees had to be brought before a (military rather than district) judge within 96 hours. B'Tselem. *Detained Without Trial: Administrative Detention in the Occupied Territories Since the Beginning of the Intifada*. (B'Tselem. Jerusalem . October 1992.). p11. These were to be subsequently reviewed every 3 months. Al-Haq. *Punishing a Nation :Human Rights Violations During the Palestinian uprising (December 1987-December 1988.)*. (South End Press Boston.1990.).p130, also National Lawyers Guild. *Treatment of Palestinians in Israeli-Occupied West Bank and Gaza: Report of the National Lawyers Guild*. (National Lawyers Guild. New York.1988.). p53. Appeal was to the president of a military court and then to the HCJ. B'Tselem. *Detained Without Trial: Administrative Detention in the Occupied Territories Since the Beginning of the Intifada*. (B'Tselem. Jerusalem . October 1992.). p11. According to NLG this provided a limited form of judicial review; the judge could quash the case if he was persuaded by the defence that these "were not objective reasons of state security" or were "made in bad faith or from irrelevant conditions" National Lawyers Guild. *Treatment of Palestinians in Israeli-Occupied West Bank and Gaza: Report of the National Lawyers Guild*. (National Lawyers Guild. New York.1988.). p51-52. Although the defence did not have the right to be told of the grounds for the internment or to see the evidence.

¹¹⁸³ Once again, individual military commanders of the rank of Colonel and above were authorised to issue administrative detention orders. Whilst the obligation to bring a detainee before a military judge within 96 hours (and subsequently) was cancelled, and detainees were allowed to appeal only to an advisory board which could make only non binding recommendations. Although a short time later this appeals board was replaced

This also meant a return to the so called "incommunicado detentions" where families were prevented from confirming that their relatives had been detained.

Other changes worth noting include Military Order No.1281 of August 1989 for it allowed the maximum period of detention to be increased from 6 to 12 months, although judicial review was required after six months.¹¹⁸⁴ via an amendment contained within Military Order 1361, which came into effect on 25th December of 1991. Of course it should be noted whatever the formal maximum duration of the enabling Military Order, there was nothing to stop an individual's administrative detention order from being renewed *ad infinitum*. Indeed in some cases renewals have continued for years without the accused ever being informed of the charges against them, for example Ali Awwad al-Jammal was released on 2 March 1982 after serving six years and nine months without charge¹¹⁸⁵.

As in Israel the broad powers were in practice moderated by other regulations, these include internal army orders, including the Instructions of the Attorney General to the Chief of Staff and Military Commanders Orders¹¹⁸⁶. The latter provide that the order must be

again by a military judge empowered to confirm or revoke such an order. National Lawyers Guild. *Treatment of Palestinians in Israeli-Occupied West Bank and Gaza: Report of the National Lawyers Guild*. (National Lawyers Guild. New York.1988.). p52 Citing Ha'aretz March 20 1988 and G. Frankel 'Israeli Army Allows Press Inspection of Detention Center for Palestinians' *Washington Post* June 3 1988 pA21. B'Tselem. *Detained Without Trial: Administrative Detention in the Occupied Territories Since the Beginning of the Intifada*. (B'Tselem. Jerusalem . October 1992.). p11

1184 B'Tselem. *Detained Without Trial: Administrative Detention in the Occupied Territories Since the Beginning of the Intifada*. (B'Tselem. Jerusalem. October 1992.). p11. Also M.O. 1236 (June 13 1988) the right of appeal to a single judge was substituted to appeal to 3 judge panel.

1185 He was then placed under house arrest until February 1984. Playfair E. *Administrative Detention in the Occupied West Bank*. (Law in the Service of Man. Ramallah. 1986. Occasional paper No 1.). p4. Another example is the physicist Tayseer al-Aruri, who was detained from April 1974 to January 1978. O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.).p250. He cites National Lawyers Guild. *Treatment of Palestinians in Israeli-Occupied West Bank and Gaza: Report of the National Lawyers Guild*. (National Lawyers Guild. New York.1978.). pp80-81.

1186 Instructions of the attorney general no 21,927 para 10(a), 10(b)120. Cohen E. *Human Rights in the Israeli Occupied Territories*. (Manchester University Press. Manchester. 1985.). p123.

preventative not punitive and there is no other option available but to preventatively detain the individual.

The Application Of The Various Definitions Of (State) Terrorism.

As previously noted in the assessment of the policy of deportation and demolitions, the fact that violence is committed for a political purpose by an organisation does not automatically make the act one of a state terrorist, for the policy of administrative detention, like that of demolition and deportation, is authorised by law. The legal act of violence used in enforcing administrative detentions as authorised by either the D.E.R., E.P.D.L. or O.C.S.R. of 1967 or 1970 could however qualify for the label of terrorism on the grounds that there is no intention of taking the victim to trial where he or she could prove their innocence. The individual victim of this non-judicial measure has not been 'punished' in the classical sense of the term, instead the administrative detainee will have been the arbitrary victim of the State's violence based merely on the 'opinion' of the relevant Israeli commander of the area, and qualifies for the attachment of the label "innocent" for they could not avoid the actions of the State.

The final hurdle that needs to be cleared by all of the examples, is that the act of politically motivated violence must have been designed to influence the behaviour of others or as the definition puts it, "wider than the immediate 'innocent' victim(s)". The State's desire to deter others through its use of this administrative punishment was expressed in 1985 by the then Minister of Defence Yitzhak Rabin:

"Those who are caught preparing, organising or carrying out terrorist acts-those people ought to be brought to court. But for those who instigate and call for participation in terror, even though they themselves are not active, administrative detention or deportation are the most effective means to cope with them, and I will not hesitate to use these measures. Not on a large scale, but mainly as a means to deterrent"¹¹⁸⁷

¹¹⁸⁷Jerusalem Post, 23 August 1985. Cited by Hiltermann J.R. *Israel's Deportation Policy In the Occupied West Bank and Gaza*. (Al-Haq (Law in the Service of Man). Occasional Paper No. 2. Ramallah.1986.). p85.

It is on the basis of fulfilling each stage of the process that administrative detentions carried out in accord with either the D.E.R., E.P.D.L., O.C.S.R. of 1967 or 1970 can be described as acts of state terrorism according to this author's definition.

The question then becomes do administrative detentions qualify as acts of state terrorism in accordance with the other proposed definitions?. The U.K.'s Prevention of Terrorism Act merely requires that the violence be politically motivated, which it is. Stohl and Lopez's definition require that the intent of the political violence was to place a victim and/or audience in fear. Even if one does not agree with the claim that all of a State's laws do, it certainly seems to be the case with this counter-terrorist policy, a fact implicitly acknowledged by Rabin who said that he would use administrative detentions "as a deterrent"¹¹⁸⁸.

The policy would also would qualify under the definition derived from Israel's Prevention of Terrorism Ordinance, as administrative detentions imply a threat of acts of violence calculated to cause injury or death to those detained. One could of course say that detention is not implicitly intended to contain such violence but consistency would then demand that kidnappings carried out by insurgents would not qualify.

However such administrative detentions carried out by Israel in accordance with the laws in force in either Israel or the West Bank do not constitute acts of terrorism under either Schmid and Jongman's definition of terrorism or that of the U.S. State department. This is because detentions are carried out overtly by the Israeli state, which means that this threat of political violence does not meet the requirement of being carried out by either sub-national groups or (at least semi-) clandestine agents demanded by both definitions.

¹¹⁸⁸Jerusalem Post. 23 Aug 85. Cited by Hiltermann J.R. *Israel's Deportation Policy In the Occupied West Bank and Gaza*. (Al-Haq (Law in the Service of Man).Occasional Paper No. 2. Ramallah.1986.). p85.

Curfews

A History.

With its decision to incorporate the British made Defence Emergency Regulations of 1945. Israel authorised the use of curfews for security purposes within Israel. Twenty years later the Israeli armed forces occupied the West Bank, and introduced the Order Concerning Security Regulations and the D.E.R., and in one of their first acts declared a 24 hour curfew *via* 'Proclamation No. 1' (June 7 1967). This was only gradually lifted¹¹⁸⁹.

Since the early 1970s curfews have constituted an important part of Israel's 'counter-terrorism' policy within the region¹¹⁹⁰. As a counter-terrorist policy curfews are used for two main reasons. Firstly, they are seen as a speedy means of restoring order when breaches of the peace occur during demonstration. Secondly, they are considered an effective method in the investigation of terrorist attacks by providing the conditions in which searches and arrests can be made as quickly as possible with the minimum of disturbance of the population¹¹⁹¹. The use of curfews became particularly widespread since the late 1970s¹¹⁹², although they probably peaked during the *intifada*. For example during the first year of the *intifada* at least 1,600 curfews were imposed with at least 400 prolonged of them in force for twenty-four hours for between 3-40 days¹¹⁹³. According to *Al-Haq*: "[w]ith few exceptions, on any given day at least 25,000 Palestinians have been involuntarily confined to their homes"¹¹⁹⁴. Or as the J.M.C.C. put it, every Palestinian in the

¹¹⁸⁹ *Al-Haq Punishing a Nation: Human Rights Violations During the Palestinian Uprising -December 1987-December 1988*. (South End Press Boston.1990.). p159.

¹¹⁹⁰ Especially since 1983 according to O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London.1991.). p245.

¹¹⁹¹ O'Brien W. *Law and Morality in Israel's War With the PLO* (Routledge. London.1991.). p246.

¹¹⁹² *Al-Haq Punishing a Nation: Human Rights Violations During the Palestinian Uprising -December 1987-December 1988*. (South End Press Boston.1990.). p159. Starting in the mid-1970s, the curfew was widely used as a means of collective punishment in response to disturbances of the peace and demonstrations." Benvenisti M. , Abu-Zayed Z. and Rubenstein D. *The West Bank Handbook: A Political Lexicon*. (The Jerusalem Post. Jerusalem. 1986.). p85.

¹¹⁹³ *Al-Haq Punishing a Nation: Human Rights Violations During the Palestinian Uprising -December 1987-December 1988*. (South End Press Boston.1990.). p154.

¹¹⁹⁴ *Al-Haq Punishing a Nation: Human Rights Violations During the Palestinian Uprising -December 1987-December 1988*. (South End Press Boston.1990.). p155.

occupied territories had spent an average of approximately ten weeks under in house curfew for the period 9 December 1987 - 31 December 1990¹¹⁹⁵. Between 12-15 November 1988, the period of the declaration of an independent Palestinian state, over one million people were put under curfew including entire Gaza strip¹¹⁹⁶. During the so called 'Gulf War Curfew' the West Bank was placed under some sort of curfew during the period 17 January - 31 March, including a total curfew for the first three weeks¹¹⁹⁷. Interestingly, Hofnung noted that "even in cases where settlers have initiated punishment raids on Arab towns curfews have not been imposed on Jewish settlements" through the period under scrutiny¹¹⁹⁸.

The Legalities.

Throughout the period under scrutiny, curfews could be introduced in both Israel or the West Bank by the use of Article 124 of the D.E.R. which stated that:

"A military commander may by order require every person within any area specified in the order to remain within doors between such hours as may be specified in the order, and in such cases, if any person is or remains out of doors within that area between such hours without a permit in writing issued by or on behalf of the military commander or some person duly authorised by the military commander to issue such permits, he shall be guilty of an offence against these Regulations".

Whilst within the West Bank curfews could also be introduced using another piece of legislation. Between 1967-1970, Article 69 of the O.C.S.R. enabled:

1195 Jerusalem Media and Communications Centre *'No -exit' Israeli Curfew Policy in the Occupied Palestinian Territories* (J.M.C.C. Jerusalem. June 1991). pi.

1196 Al-Haq *Punishing a Nation: Human Rights Violations During the Palestinian Uprising -December 1987-December 1988*. (South End Press Boston.1990.). p155.

1197 Jerusalem Media and Communications Centre *'No -exit' Israeli Curfew Policy in the Occupied Palestinian Territories* (J.M.C.C. Jerusalem. June 1991). p60.

1198 Hofnung M. *Democracy, Law and National Security in Israel*. (Dartmouth. Aldershot. 1996.). p264. Indeed his comments are not limited to the period 1967-1994.

"A military commander may by an order require any person within an area described in the order to remain at home during those hours without a written permit issued by the military commander or on his behalf shall be guilty of an offence against this Order" 1199.

In May of 1970 a new O.C.S.R was introduced into the West Bank via Military Order No. 378, Article 89 of which stated:

"A Military Commander may by order require any person within the area indicated in the order to remain within doors during such hours as may be specified in the order. Any person found out of doors within the said area during such hours without a permit in writing issued by or on behalf of the Military Commander, shall be guilty of an offence under this Order"1200

In January 1988 this power to issue curfews was devolved to senior military officers¹²⁰¹.

The Application Of The Various Definitions of (State) Terrorism.

The legal imposition of a curfew in which the residents of a given area are given notice that it is illegal to step outdoors does not qualify for this author's definition of terrorism, on the grounds that the victim of the State's legal violence could avoid the imposition of violence by modifying his or her behaviour, by declining to go out and break them.

As for the other definitions, the threat of violence inherent with the introduction of a curfew fulfils the limited requirements of the British definition, for the purpose of this political violence is to put a section of the public in fear. It also fits Stohl and Lopez's definition for the purpose of the violence enforcing the curfew policy is to "create fear

1199 United Nations Special Working Group of the Human Rights Commission Report. UN/E/ CN.4/1016. p31

1200 Shamagar M. (ed) *Military Government in the Territories Administered by Israel* (Alpha Press, Jerusalem. 1982) Appendix C. Security Provisions Order (Consolidated Version 1980) No.378. p488.

1201 Shalev C. 'The Price of Insurgency: Civil Rights in the Occupied territories'. (published under the auspices of the West Bank Database Project: Tel Aviv. 1988) p35. Cited in Al-Haq *Punishing a Nation: Human Rights Violations During the Palestinian Uprising -December 1987-December 1988*. (South End Press Boston.1990.). p170.

and/or compliant behaviour" in a "victim of the threat". Similarly the threat of violence inherent in the imposition of a curfew constitutes terrorism in accordance with the Israeli derived definition for this demands that the threats of violence are calculated to cause death or injury to a person. Unless one believes that this is non-inherent within the threat of violence which enforces it.

It does not however qualify for the label in accordance with either the American definition or that belonging to Schmid and Jongman, because the Israeli forces enforcing the curfew do not constitute the clandestine or at least semi-clandestine forces required by these two definitions.

Israeli Counter-terrorist Actions Abroad.

There are a number of difficulties in producing an assessment of the State's use of violence outside its area of domestic jurisdiction, above and beyond the demands of each of the definitions which are to be applied to such actions. The first difficulty is that of content, for even when it has been decided that it is Israeli counter-terrorist actions which involve violence that constitute the focus of this analysis, there is a problem of deciding exactly which actions to examine. This problem was identified by William O'Brien, who carried out an assessment of Israel's war with the P.L.O. from the point of view of international law, when he wrote:

"Israel has carried out thousands of counterterror attacks on the PLO. It would take a large contingent of military historians, international lawyers and moralists to evaluate these attacks"¹²⁰²

So whilst this part of the thesis applies different criteria than O'Brien, like him it overcomes the problem of content by examining only a selection of incidents. This does not mean however, that the thesis will simply reproduce all of the incidents examined by O'Brien contained within the chapter of his book entitled "War-conduct Law in Counterterror Actions"¹²⁰³. The reasons for not simply examining just those the events analysed and assessed by O'Brien in his book *Law and Morality in Israel's War With the PLO*, are numerous. The first, is that some of the events examined by O'Brien occurred before June 1967, the starting date of this analysis. Secondly, an analysis of all of the post 1967 incidents examined by O'Brien would be rather tedious for the reader, in that there would be a great deal of repetition in the

¹²⁰² He evaluates them "in terms of their compliance with the standards of legitimate military necessity". O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p149.

¹²⁰³ Chapter entitled "War-conduct Law in Israeli Counter Terrorist Actions" O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.).p148-172.

assessment of essentially similar events¹²⁰⁴. This latter position was that broadly held by Arend and Beck whose assessment of "forcible state responses to terrorism" contained within their book entitled *International Law and the Use of Force* made reference to O'Brien's work¹²⁰⁵. The limited selection of events analysed here is however larger than that examined by Arend and Beck, and this is despite the fact that their analysis includes counter-terrorist actions carried out by states other than Israel¹²⁰⁶. Thirdly, this exclusion of numerous "essentially similar events" simultaneously creates space for a consideration of counter-terrorist actions which O'Brien failed to address for one reason or another. Including, although not restricted to, events that occurred after his book was published in 1991.

The second difficulty in producing an assessment of the State's use of violence outside its area of domestic jurisdiction is the reliability of the claims that Israel has engaged in such acts. It would be both extremely time consuming and difficult -if not impossible- to assess the validity of each of the descriptions of the events that Israel is said to have committed, many of which operate within the 'twilight zone' of undercover work. Luckily the question of validity is not as important as it could be seeing that the aim of this section is merely to 'test' some definitions of the term terrorism. This said, the author has attempted to minimise any inaccuracies by taking detail on alleged incidents from books and articles written on the work of the Israeli security forces that are far from hostile to Israel. Indeed most are sympathetic¹²⁰⁷ with the

¹²⁰⁴ Almost all of the uses of force mentioned by O'Brien in his chapter entitled "War-conduct Law in Israeli Counter Terrorist Actions" are directed at combatant targets. Whilst he fails to examine the Beirut airport incident. O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.).p148-172.

¹²⁰⁵ Most notably in the section entitled "Military strikes against terrorist states", Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.).p152. See examples examined on pages 148-155.

¹²⁰⁶ Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.). See examples examined on pages 148-155.

¹²⁰⁷ For example, in his introduction Katz wrote, "Originally, this book was conceived as a testament to the unheralded courage of the Israeli National Police Border Guards in their battle against Palestinian terrorism and more specifically, for the brilliant counter-terrorist/guerilla campaign their outnumbered and over-whelmed forces performed in Lebanon in the wake of the 1982 Israeli invasion". Katz S.M. *Guards Without Frontiers: Israel's War Against Terrorism*. (Arms and Armour. London. 1990). p11. He also dedicates the book to the Border Guards Northern brigade and notes "the assistance of the Israeli national Police" amongst others. His book was also scrutinized of the Israeli Military Censor. Katz S.M. *Guards Without Frontiers: Israel's War Against*

most 'hostile' being those produced by the writers on international law, and a B.B.C. journalist. The works upon which this chapter of the thesis are based are Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm* 1208; Black I. and Morris B. *Israel's Secret Wars: The United History of the Israeli Intelligence* 1209; Deacon R. *Israeli Secret Service* 1210; Katz S.M. *Guards Without Frontiers: Israel's War Against Terrorism* 1211; Melman Y. and Raviv D. *Every Spy a Prince* 1212; O'Brien W. *Law and Morality in Israel's War With the PLO* 1213; Posner S. *Israel Undercover: Secret Warfare and Hidden Diplomacy in the Middle East* 1214; Falk R.A. 'The Beirut Raid and the International Law of Retaliation' 1215; Blum Y.Z. 'The Beirut Raid and the International Double Standard: A Reply to Professor Richard A. Falk' 1216; Bowett D. 'Reprisals Involving Recourse to Armed Force' 1217 and the B.B.C. television serial and accompanying book by Peter Taylor entitled *States of Terror* 1218.

The third difficulty in producing an assessment of the State's use of violence outside its area of domestic jurisdiction is that unlike the actions which are committed within a state's area of domestic jurisdiction, there are no obvious classifications for these acts. This thesis must therefore produce some and it proposes to adapt those

Terrorism. (Arms and Armour. London. 1990). p12-13. This latter point is also true of Black and Morris' book and they note that the bulk of it had been read over by retired intelligence officers. Black I. and Morris B. *Israel's Secret Wars: The United History of the Israeli Intelligence*. (Hamish Hamilton. London. 1991.).pvii.

1208 Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.).

1209 Black I. and Morris B. *Israel's Secret Wars: The United History of the Israeli Intelligence*. (Hamish Hamilton. London. 1991.).

1210 Deacon R. *Israeli Secret Service*. (Hamish Hamilton. London. 1979.).

1211 Katz S.M. *Guards Without Frontiers: Israel's War Against Terrorism*. (Arms and Armour. London. 1990.).

1212 Melman Y. and Raviv D. *Every Spy a Prince*. (Houghton Mifflin. Boston. 1990.)

1213 O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.)

1214 Posner S. *Israel Undercover: Secret Warfare and Hidden Diplomacy in the Middle East*. (Syracuse University Press. 1987.).

1215 Falk R.A. 'The Beirut Raid and the International Law of Retaliation'. *American Journal of International Law*. Vol. 63. 1969. pp415-443.

1216 Blum Y.Z. 'The Beirut Raid and the International Double Standard: A Reply to Professor Richard A. Falk'. *American Journal of International Law*. Vol. 64. 1970. pp73-105.

1217 Bowett D. 'Reprisals Involving Recourse to Armed Force'. *American Journal of International Law*. Vol. 66 (1).pp1-36.

1218 Taylor P. *States of Terror*. (B.B.C. Books. London. 1993.).

produced by Arend and Beck in their aforesaid assessment of "forcible state responses to terrorism".¹²¹⁹ Their four-fold classification reads:

- "a. abductions of suspected terrorists;
- b. assassinations of particular terrorists;
- c. military strikes against terrorist bases; and
- d. military strikes against states allegedly involved in terrorism".

This classification of "forcible state responses to terrorism" needs some adaptation, for without it their categories are a little too precise, in that at least two of them (the middle two) can be read as excluding *apriori*, the idea that Israel may have made military strikes of one form or another against 'illegitimate targets'. So although the classifications are being adapted on these grounds the new wording should not be taken to imply *apriori* that Israel has made such attacks on illegitimate targets, it merely allows for the possibility. The new albeit artificial, and not necessarily mutually exclusive classifications are:

- a. abduction attempts;
- b. attempts on the lives of individuals;
- c. military strikes against bases and property;
- d. other military strikes.

However before such an analysis will be undertaken it is useful to note that unlike other definitions identified in the conceptual part of the thesis, none of the following rely upon "actually existing international law", for as already noted in the chapter entitled 'A Legalistic Approach' such an approach produces more problems than this. Indeed even if one accepted that the United Nations legal regime on the issue was the only one to exist and that it bound non-members, the problems are manifold and are worth being reminded of. Firstly one would have to decide whether Israel's use of force against those struggling to achieve self-determination was legal *per se*, in light of the claim that international law forbids this. Perhaps the most famous piece of which is the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States In Accordance with the

¹²¹⁹ Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge, London, 1993.).p147.

Charter of the United Nations, passed without opposition by the General Assembly in 1970. It stated that "every state has the duty to refrain from any forcible action which deprives peoples...of their right to self-determination and freedom and independence".

Secondly, one would have to decide whether the goal of the P.L.O., or later *Hamas*, or Islamic Jihad was ever the "violent overthrow" of Israel¹²²⁰. This is important if one takes the view that Article 2(4) allows the use of force by a State in response to an attack which threatens its the "territorial integrity" or "political independence". Even if the answer was 'Yes', then the question to be answered would be whether the cross border attack by Palestinian *fedayeen* was of sufficient intensity to be termed "an armed attack" in line with Article 51 of the U.N. Charter. As Levenfeld noted:

"The definition of "armed attack" is crucial because Israel's resort to self-defence is legal under the U.N. Charter as interpreted above only if a *fedayeen* raid constitutes an "armed attack"¹²²¹.

Brownlie for example claimed that *fedayeen*-like cross-border raids do not constitute an 'armed attack' under Article 51, especially if such attacks are 'isolated or sporadic'¹²²². However just to show the complexity of the matter is worth noting that Brownlie also noted that a "co-ordinated and general campaign by powerful bands of irregulars, with obvious or easily proven complicity of the government of the State

¹²²⁰ Levenfeld B. 'Israel's Counter-*Fedayeen* Tactics in Lebanon; Self-Defense and Reprisal Under Modern International Law'. *Columbia Journal of Transnational Law*. Vol. 21. (1) 1982. pp1-48. p7.

¹²²¹ Levenfeld B. 'Israel's Counter-*Fedayeen* Tactics in Lebanon; Self-Defense and Reprisal Under Modern International Law'. *Columbia Journal of Transnational Law*. Vol. 21. (1) 1982. pp1-48. p16.

¹²²² Brownlie 'International Law and the Activities of Armed Bands' *International and Comparative Law Quarterly*. Vol 7. 1958. p731 cited by Levenfeld B. 'Israel's Counter-*Fedayeen* Tactics in Lebanon; Self-Defense and Reprisal Under Modern International Law'. *Columbia Journal of Transnational Law*. Vol. 21. (1) 1982. pp1-48. p16. Similarly Garcia-Mora noted that there is an "almost total absence" of a conviction among governments that the activities of armed bands constitute an armed attack, thus justifying measures of self - defence under Article 51 of the U.N. Charter. Garcia-Mora M. *International Responsibility for Hostile Acts of Private Persons Against Foreign States*. (1962). p129 cited by Levenfeld B. 'Israel's Counter-*Fedayeen* Tactics in Lebanon; Self-Defense and Reprisal Under Modern International Law'. *Columbia Journal of Transnational Law*. Vol. 21. (1) 1982. pp1-48. p16.

from which they operate", would constitute such an "armed attack"¹²²³. In addition one would surely have to consider the decisions of the Security Council. After studying U.N. Security Resolutions on the issue of Israeli incursions into Lebanon in response to *fedayeen* attacks between 1968-78, Levenfeld concluded that:

"The message of the Security Council in dealing with Israeli exercises of its alleged right of self-defence or reprisal is clear: they are completely unlawful. No amount of *fedayeen* activity can justify the resort by Israel to armed force since *fedayeen* activities do not constitute armed attacks"¹²²⁴

Then there are the other requirements demanded by customary international law before any response can be said to be legal including the immediacy and intensity (or proportionality) of the State's violent reply. According to Levenfeld one explanation for the Security Council's arrival at such a conclusion is that it considers each particular use of force in isolation, and refuses to take into account justifications based on broader political or military contexts, presumably on the grounds that this permits a faster and easier judgement because complicating factors are ignored¹²²⁵. This approach rejects, *ab initio*, any argument proffered by Israel based on the broader context of an accumulation of prior *fedayeen* attacks. Events not immediately preceding the Israeli resort to force are simply not part of the equation

¹²²³ Brownlie 'International Law and the Activities of Armed Bands' International and Comparative Law Quarterly. Vol 7. 1958. p731 cited by Levenfeld B. 'Israel's Counter-Fedayeen Tactics in Lebanon; Self-Defense and Reprisal Under Modern International Law'. *Columbia Journal of Transnational Law*. Vol. 21. (1) 1982. pp1-48. p16.

¹²²⁴ Levenfeld B. 'Israel's Counter-Fedayeen Tactics in Lebanon; Self-Defense and Reprisal Under Modern International Law'. *Columbia Journal of Transnational Law*. Vol. 21. (1) 1982. pp1-48.p19. Levenfeld also noted that "In the decade from 1968 to 1978, the specific question of Israeli counter-fedayeen activities directed at Lebanon was the subject of eleven Security council resolutions. These eleven resolutions condemn israel for violating the territorial integrity of Lebanon or for engaging in forbidden military reprisals'. Levenfeld B. 'Israel's Counter-Fedayeen Tactics in Lebanon; Self-Defense and Reprisal Under Modern International Law'. *Columbia Journal of Transnational Law*. Vol. 21. (1) 1982. pp1-48. p17. O'Brien complained that: "For those for whom international law is deduced from the resolutions of organizations like the Security Council and the official pronouncements of states, Israel's 1982 Lebanon war was not a permissible exercise of the rights of self defence" O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p145.

¹²²⁵ Levenfeld B. 'Israel's Counter-Fedayeen Tactics in Lebanon; Self-Defense and Reprisal Under Modern International Law'. *Columbia Journal of Transnational Law*. Vol. 21. (1) 1982. pp1-48. p18.

examined by the Security Council¹²²⁶. Levenfeld also notes a second underlying operating principle of the Security Council, which operates neatly in conjunction with the first. That is its strict application of notions of proportionality¹²²⁷. The practical result of this is that an organised Israeli military action "will always appear disproportionate to a lone, preceding *fedayeen* attack"¹²²⁸.

Finally those who would like to include some or all of actually existing international law in identifying the acts of state terrorism, would also have to address the issue of the applicability of particular treaties even when they have been signed and ratified by the party concerned. Here the author is thinking about Israel's refusal to say that the Geneva Convention applies to their 'occupation' of the West Bank, rather than the actual application of it, which contains as many problems as this author's identification of an illegitimate target.

So after reminding the reader as to the practical problems of the main alternative school of thought, the thesis goes on to apply the 6 definitions to the counter-terrorist actions of Israel, committed abroad, starting with attempts by Israel to abduct individuals.

¹²²⁶ Levenfeld B. 'Israel's Counter-*Fedayeen* Tactics in Lebanon; Self-Defense and Reprisal Under Modern International Law'. *Columbia Journal of Transnational Law*. Vol. 21. (1) 1982. pp1-48. p19.

¹²²⁷ Levenfeld B. 'Israel's Counter-*Fedayeen* Tactics in Lebanon; Self-Defense and Reprisal Under Modern International Law'. *Columbia Journal of Transnational Law*. Vol. 21. (1) 1982. pp1-48. p19.

¹²²⁸ Levenfeld B. 'Israel's Counter-*Fedayeen* Tactics in Lebanon; Self-Defense and Reprisal Under Modern International Law'. *Columbia Journal of Transnational Law*. Vol. 21. (1) 1982. pp1-48. p19.

Abduction Attempts.

According to Arend and Beck abductions of alleged terrorists have been attempted on at least four occasions in the post-Charter period, thrice by Israel and once by the United States (the so called Achille Lauro incident)¹²²⁹. This section examines in detail all of the three Israeli abductions mentioned by Arend and Beck for this reason, but also because the three can be used as analogies for the detention of thousands of Lebanese men detained and abducted to Israel (and south Lebanon)¹²³⁰ following 'Operation Peace in Galilee' in June and July of 1982, which incidentally Arend and Beck did not notice. According to Black and Morris, those Lebanese considered guilty of activity in a guerrilla organisations were sent to the big Ansar detention centre, south-east of Sidon. By August 1982 it contained an estimated 10,000 prisoners¹²³¹. The *Shin Beit* often appeared to be carrying out arrests at random in the hope of gleaning some information on the guerrillas. Whilst the local population saw this as an attempt to terrorise and cow them¹²³².

The first of the three main incidents is said to have occurred on 10 August 1973. It is then that the Defence Minister Moshe Dayan and Chief of Staff David Elazar were given permission to intercept a civilian Middle East Airlines flight from Lebanon to Iraq¹²³³ by the Prime Minister Golda Meir, in the belief that the aircraft contained the commander of the P.F.L.P. Dr. George Habash and his operations Chief, Wadi Haddad¹²³⁴. According to Katz, Israeli leaders had long maintained

¹²²⁹ Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.).p147/148. In the accompanying footnote (no.94.)they also mention the F.B.I.'s arrest of an alleged Lebanese Shi'ite terrorist Fawaz Younis in international waters as he 'voluntarily' boarded a vessel there.

¹²³⁰ Black I. and Morris B. *Israel's Secret Wars: The United History of the Israeli Intelligence*. (Hamish Hamilton. London. 1991.). p395.

¹²³¹ Black and Morris note that this is an Amnesty International estimate (but don't give any more details). Black I. and Morris B. *Israel's Secret Wars: The United History of the Israeli Intelligence*. (Hamish Hamilton. London. 1991.). p397.

¹²³² Black and Morris cite The Times of the 7,12,14 March 1985. Black I. and Morris B. *Israel's Secret Wars: The United History of the Israeli Intelligence*. (Hamish Hamilton. London. 1991.). p397.

¹²³³ Posner S. *Israel Undercover: Secret Warfare and Hidden Diplomacy in the Middle East*. (Syracuse University Press. 1987.). p49.

¹²³⁴ Katz S.M. *Guards Without Frontiers: Israels War Against Terrorism*. (Arms and Armour. London. 1990). p49.

a personal vendetta against the Marxist Habash¹²³⁵. While Katz himself notes that "[t]he IDF had tried, and failed, to take care of Habash on previous occasions"¹²³⁶. The unmarked¹²³⁷ Israeli Air Force (or I.A.F.) Mirage IIICs and F-4Es forced the civilian airliner to land in Israel with its 81 or so passengers¹²³⁸. However on landing it was found that the plane did not contain any terrorists and following their initial interrogation the passengers and crew were allowed to fly on. The Israeli delegate to the U.N. Security Council claimed that Israel's actions were permitted by the laws of self-defence. However the Security Council unanimously condemned the forcible Israeli action¹²³⁹.

On 4 February 1986, Israel embarked upon a similar unsuccessful attempt to capture Habash, when Israeli F-16's intercepted¹²⁴⁰ a Libyan Airlines jet *en route* to Damascus and compelled it to land in Israel¹²⁴¹. Again the Israel's justified such forcible action in 'self-defence'. This time the U.S. were unable to accept the draft Security Council resolution, which they claimed implied that the interception of aircraft was wrong *per se* ¹²⁴².

¹²³⁵ Katz S.M. *Guards Without Frontiers: Israels War Against Terrorism*. (Arms and Armour. London. 1990). p49.

¹²³⁶ Katz S.M. *Guards Without Frontiers: Israels War Against Terrorism*. (Arms and Armour. London. 1990).p50. Alo notes that they aimed to kill him during an operation in Tripoli, Northern Lebanon. p49.

¹²³⁷ Posner wrote that the Israeli warplanes did not have markings. Posner S. *Israel Undercover: Secret Warfare and Hidden Diplomacy in the Middle East*. (Syracuse University Press. 1987.).p49.

¹²³⁸ Katz S.M. *Guards Without Frontiers: Israel's War Against Terrorism*. (Arms and Armour. London. 1990.).p49. Posner put the total at 74 passengers and 7 crew, and mentions only Mirage warplanes. Posner S. *Israel Undercover: Secret Warfare and Hidden Diplomacy in the Middle East*. (Syracuse University Press. 1987.).p49. Arend and Beck put the total at 90 persons, Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.). p148.

¹²³⁹ Arend and Beck cite UNSCOAR 1738. Mtg. 35. UNDoc: S/PV. 1738 (1973). Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.). p148.

¹²⁴⁰ Melman Y. and Raviv D. *Every Spy a Prince*. (Houghton Mifflin. Boston. 1990.). p399.

¹²⁴¹ Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.).p149. Also Katz S.M. *Guards Without Frontiers: Israels War Against Terrorism*. (Arms and Armour. London. 1990).p49; and Melman Y. and Raviv D. *Every Spy a Prince*. (Houghton Mifflin. Boston. 1990.).p398-9.

¹²⁴² Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.).p149. Based on the comments of US. Ambassador V. Walters. UN Doc. S/PV 2655.corr.1. Feb 18. 1989.1112-113.

Before dawn on 28 July 1989, twelve members of Israel's *Sayeret Mat'kal* (the reconnaissance unit of General Staff) in combat fatigues were landed by helicopter at the home of Sheikh Abdul Karim Obe'id, a senior Muslim cleric¹²⁴³. According to Katz the Israeli's claimed that the Sheikh was commander of fundamentalist group *Hezbollah* ('the party of god') in southern Lebanon, and was personally behind "dozens of terrorist attacks"¹²⁴⁴. Arend and Beck similarly wrote that the Israeli's initially said he was responsible for passing "war materiel to the Hezbollah fighters in Southern Lebanon" and sheltering those who had committed attacks¹²⁴⁵. Obe'id was later accused of being an "inciter" and of being a "planner of attacks against Israel"¹²⁴⁶. The Sheikh was abducted along with two other men from his house and a neighbour of his was killed¹²⁴⁷. According to Katz, the raid sent a message to *Hezbollah* that Israel would not tolerate car bombings and shootings of Israeli soldiers¹²⁴⁸.

As a result of this incident Egypt accused Israel of "state terrorism"¹²⁴⁹. Meanwhile following "prior off-the-record-consultations", the Security Council unanimously adopted Resolution 638 which condemned unequivocally all acts of hostage-taking and abduction¹²⁵⁰, but did not specifically mention the abduction of Sheikh Obe'id.

1243 Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.).p150. It was Katz who mentioned the combat fatigues. Katz S.M. *Guards Without Frontiers: Israels War Against Terrorism*. (Arms and Armour. London. 1990). p204.

1244 Katz S.M. *Guards Without Frontiers: Israels War Against Terrorism*. (Arms and Armour. London. 1990.). p204.

1245 Arend and Beck cite "Israeli Commando 's Seize leader of Pro-Iran Group in Lebanon" *New York Times*. July 29. 1989. 4 Col1.Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.).p150

1246 Arend and Beck cite 'Free Shiek, Group warns, Or Americans will die' *New York Times*. July 31. 1989. A2 Col.1 . Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.).p150.

1247 Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.).p150.

1248 Katz S.M. *Guards Without Frontiers:Israels War Against Terrorism*. (Arms and Armour. London. 1990). p205.

1249 Arend and Beck cite 'Israel Dismisses Criticism. *New York Times*. July 30. 1989. 6, Col 5.Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.). p150.

1250 Arend and Beck cite UN Doc. S/PV.2872, July 31. 1989. and S/RES/638(1989).Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.). p150.

The Application of the Various Definitions of (State) Terrorism.

In contrast to many of the other actions under examination within this second part of the assessment of Israel's counter-terrorist actions, Israel's actions are rather openly acknowledged, even if some of them were carried out by covert means. There seems little dispute that both the successful and unsuccessful attempts to kidnap alleged leaders of 'terrorist groups' were carried out for political motives by an organisation- that is known as the State of Israel. Slightly more debate surrounds the nature of the intended target and the purpose of the act.

If one accepts the Israeli view that Habash, Haddad and Sheikh Obe'id were involved in the production of attacks on Israel (and this author does) then all of them constitute legitimate targets, and for this reason their abduction cannot constitute an act of state terrorism using my definition. This said consistency would then require that attempts by Palestinian organisations to kidnap Israeli leaders and soldiers would not constitute acts of terrorism for the same reason.

Once this conclusion has been arrived at the question over whether the intent of the Israelis in abducting each of the three was merely to remove them, or to send a message to others (as Katz suggested was the case with Sheikh Obe'id¹²⁵¹) no longer affects this author's answer. Nevertheless the question of intent is still important in regards to some of the other definitions or to my definition, if one does not accept that Israel genuinely believed that Sheikh Obe'id passed "war materiel to the Hezbollah fighters in Southern Lebanon", sheltered those who had committed attacks¹²⁵² or planned attacks against Israel¹²⁵³. For example if one did not believe Obe'id was a combatant and one believed that Israel aimed to use Sheikh Obe'id as a swop for Israeli soldiers, as

¹²⁵¹ The raid sent a message to *Hezbollah* that Israel would not tolerate car bombings and shootings of Israeli soldiers. Katz S.M. *Guards Without Frontiers: Israel's War Against Terrorism*. (Arms and Armour. London. 1990). p205.

¹²⁵² Arend and Beck cite "Israeli Commando 's Seize leader of Pro-Iran Group in Lebanon" *New York Times*. July 29. 1989. 4 Col1. Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.). p150.

¹²⁵³ Arend and Beck cite 'Free Sheikh, Group warns, Or Americans will die' *New York Times*. July 31. 1989. A2 Col.1 . Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.). p150.

has been suggested¹²⁵⁴, then his abduction would constitute an act of state terrorism in accordance with my definition.

As for the abductions by Israel of 10,000 Lebanese, such actions do not constitute state terrorism under this author's definition if these people were members of guerrilla organisations, and were treated as such. The practice of Israel seems to support this even if their words do not. As William O'Brien put it in regards to the P.L.O.: "[n]o belligerent status was recognised, but some of the central features of the P[.O.]W regime were incorporated into Israeli treatment of captured PLO *fedayeen*"¹²⁵⁵. Including visits by the Red Cross.

If however some of the 10,000 were not known to be *fedayeen* and were taken to guarantee the 'good' behaviour of those remaining in Lebanon, i.e to terrorise and cow the remaining civilians in Lebanon¹²⁵⁶, then such actions would constitute acts of state terrorism for the aim of the Israelis was to modify the behaviour of others. However if some of 10,000 were not known to be *fedayeen* but were taken simply to be interrogated in the hope of gaining information then such actions could not constitute acts of state terrorism for the aim of the Israelis was to simply gain information not to modify the behaviour of others.

Likewise if some of the 10,000 were taken to face criminal charges for acts against the Israelis they had committed in or from Lebanon (except of course 'war crimes') then such actions could constitute acts of state terrorism if the aim of the Israelis was to modify the behaviour of others. This is because Israel has as little right to enforce its law in Lebanon unless of course Israel established its rule within the West Bank, as it did in the West Bank.

¹²⁵⁴ Katz wrote "When the *Sayaret Mat'kal* commandos abducted Sheikh Obe'id, it was to gain them an added leverage in the stalled and frustrated efforts to bring their men home". Katz S.M. *Guards Without Frontiers: Israel's War Against Terrorism*. (Arms and Armour. London. 1990). p205.

¹²⁵⁵ O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p200.

¹²⁵⁶ Black and Morris cite *The Times* of the 7,12,14 March 1985. Black I. and Morris B. *Israel's Secret Wars: The United History of the Israeli Intelligence*. (Hamish Hamilton. London. 1991.). p397.

Do these abductions qualify as acts of terrorism in accordance with the other proposed definitions? The use of violence involved in kidnapping the alleged leaders of terrorist groups and the 10,000 Lebanese satisfies the demand of the Prevention of Terrorism Act that the use of violence was political as well as its option requirement that it was for the purpose of putting "any section of the public in fear". It is on the latter basis that it fulfils Stohl and Lopez's demand that the purposeful act of violence aimed to create fear or compliant behaviour in the victim. On this occasion the aim was to instil fear in the victims themselves, if not other members of the Palestinian groups.

The attempted kidnappings can only be seen to have avoided the application of the label terrorism in accordance with Israel's P.T.O. if one accepts that the use of violence involved in any kidnap was not "calculated to cause death or injury to a person or to threats of such acts of violence". It would be surprising to see this interpretation being applied by Israeli law in regards to the abductions committed by sub-state groups. Therefore here, as in the section on arrests within the areas administered by Israel, the use of force by Israel is assumed to contain the threat of injury to those who resist it. It is for this reason that the various abductions are seen to fit the Israeli definition.

Unless one comes to a different conclusion on the nature of the victims than this author already has, each of the three named kidnappings do not qualify in accordance with the U.S. definition because it requires that the premeditated, politically motivated violence be perpetrated against "non-combatant" targets. Moreover the U.S. definition also required that such violent actions were carried out by clandestine agents, and only the first attempt to abduct Habash and Haddad matches this criteria. The requirement of being perpetrated by clandestine actors, also makes it easy to see why the abduction of 10,000 Lebanese could not be labelled as acts of terrorism in accordance with the U.S. definition, for presumably the vast majority of the 10,000 were taken by regular army units rather than *via* undercover forces. However if any of the 10,000 were not genuinely considered to be combatants by the Israelis and were taken by clandestine actors, for the purpose of guaranteeing the 'good' behaviour of others in Lebanon and were thus taken in order to terrorise and cow the remaining civilians in

Lebanon¹²⁵⁷ such acts would qualify for the label terrorism in accordance with the U.S. definition.

With Schmid's definition the question of labelling is more problematic. Firstly there is the question of the repeated nature of the action, which seems to be evident (with the exception of the first abduction), in that the Israeli armed forces have undertaken violent actions on previous occasions against all of the groups involved, and they have also undertaken kidnappings on a number of occasions. Secondly there needs to be evidence to suggest that the Israeli forces involved in the kidnapping were clandestine, or at least semi-clandestine. This author has yet to come across any in the case of Sheikh Obe'id, but it does seem to be the case in the first attempted kidnapping of Dr. George Habash, and Haddad, for according to Posner, the Israeli warplanes did not have markings¹²⁵⁸. This requirement probably rules out most of the 10,000 Lebanese taken. Taking this to be so, the question to be answered becomes whether the direct targets of violence -Sheikh Obe'id and any of the 10,000 Lebanese taken by semi-clandestine agents- were the main target, or was their use primarily that of a message generator?.

Here there is the problem of proving the intent of the perpetrator that hinders any attempt to identify an act of terrorism. It seems that the Israeli's had targeted Habash on a number of occasions (including attempts to kill him), but now they seemed to want him alive or were unprepared to kill the rest of the airline passengers to get him. This may suggest that Habash may have been used to generate a message to other members of the P.L.O. or even wider Palestinian audience, but it is equally as credible to suggest they wanted him for intelligence. It is because of this uncertainty that Israel will be given the benefit of the doubt and it will be said that this act does not fit Schmid's definition. Likewise if any of the 10,000 captured by covert forces, were taken for intelligence reasons they too could not qualify for Schmid's label. However if any of the 10,000 were taken by clandestine actors, primarily for the purpose of guaranteeing the 'good' behaviour of

¹²⁵⁷ Black and Morris cite *The Times* of the 7,12,14 March 1985. Black I. and Morris B. *Israel's Secret Wars: The United History of the Israeli Intelligence*. (Hamish Hamilton. London. 1991.). p397.

¹²⁵⁸ Posner S. *Israel Undercover: Secret Warfare and Hidden Diplomacy in the Middle East*. (Syracuse University Press. 1987.). p49.

others in Lebanon then such actions would qualify for Schmid's label for they were taken in order to terrorise and cow the remaining civilians in Lebanon¹²⁵⁹.

¹²⁵⁹ Black and Morris cite *The Times* of the 7,12,14 March 1985. Black I. and Morris B. *Israel's Secret Wars: The United History of the Israeli Intelligence*. (Hamish Hamilton. London. 1991.). p397.

b) Attempts On The Lives of Individuals.

There seems to be little doubt that since 1967, if not before, the Israeli state has sent members of its security forces abroad with the aim to kill people for counter-terrorist purposes. Indeed it has been suggested that the Israeli's were engaged in such life threatening activities prior to their occupation of the West Bank in June 1967. According to Deacon¹²⁶⁰, the tactic of using "unofficial assassination squads" were launched as early as 1956 the year in which Colonels Hafaz and Mustafa -allegedly the Egyptian Military Intelligence controlling officers of the Palestinian *fedayeen* - were killed. Deacon also suggests that the Israelis were the first Secret Service in modern times to use the tactical weapon of the letter-bomb¹²⁶¹. An early example of this was 'Operation Damocles'¹²⁶², in which Israel sent letter bombs to German scientists working on ballistic missiles capable of delivering chemical and biological payloads for the Egyptians in the early 1960s and their families¹²⁶³.

Since 1967 Israel has allegedly been involved in attempts to kill many individuals abroad, and it is worth describing all of those that this author has come across because many of them are strikingly similar to methods normally labelled as terrorism when committed by sub-state groups. In the days following the Israeli's victory in the June 1967 war, *Sayeret Haruv*, an élite paratroop reconnaissance force of the I.D.F.'s Central Command, was given the order to seize (or perhaps even kill) Yasser Arafat and attempted to do so in Jordan on a number of

¹²⁶⁰ Deacon R. *Israeli Secret Service*. (Hamish Hamilton. London.1979.).p222/223. He goes on to say that some of the unofficial assassination squads include 'The Avengers' , 'Masada'- named after the great rock on the edge of the Judean Desert where the Zealots made their last great stand against the Romans-; 'Squad 101' [also sometimes designated 'Squad 1001' as a confusion tactic]; the 'July Unit' and 'Wrath of God', usually more irreverently called 'WOG'. p222.

¹²⁶¹ Deacon R. *Israeli Secret Service*. (Hamish Hamilton. London.1979.). p224

¹²⁶² In the campaign against German scientists, there were a few injuries and much intimidation. Melman Y. and Raviv D. *Every Spy a Prince*. (Houghton Mifflin. Boston. 1990.).p122. Melman and Raviv note that two Mossad agents sent to Switzerland "Their task was to frighten the daughter of Paul Görka , one of the German scientists working on Egypt's missile project. They told Heidi Görka there could be dire consequences if her father did not leave Cairo at once". Melman Y. and Raviv D. *Every Spy a Prince*. (Houghton Mifflin. Boston. 1990.). p124.

¹²⁶³ Katz S.M. *Guards Without Frontiers: Israels War Against Terrorism*. (Arms and Armour. London. 1990). p35.

occasions¹²⁶⁴. According to Melman and Raviv, the Israeli attempt to kill Yasser Arafat in mid-December of 1967 was the seventh time that the Israeli's had failed to ensnare the P.L.O. leader¹²⁶⁵. A Israeli magazine *Ha'olam Hazeh* (This World) has also claimed that *Mossad* had been trying to assassinate Arafat since the mid-1960's but never did because the "opportunity never arose"¹²⁶⁶. Whilst the Israeli daily *Yediot Aharonet* quoted a book published in Egypt which claimed that *Mossad* had made several attempts on life of Arafat including (attempted poisonings) in the Far East in 1978, Romania in 1979, and after the 1982 invasion of Lebanon¹²⁶⁷.

The next incident which falls within the period considered in this analysis is the allegation that in July 1970 the Israeli's set out to kill Dr. Wadi Haddad the military leader of Popular Front for the Liberation of Palestine (or P.F.L.P.) in his Beirut apartment, although the planned rocket attack failed¹²⁶⁸. This was followed in July 1972 by "the first big strike" by the Israeli 'avenger squads' in retaliation for the attack on Lydda (or Lod¹²⁶⁹) airport¹²⁷⁰. After being secretly put ashore in Beirut, two *Mossad* agents wired a radio-controlled bomb to the car of the P.F.L.P.'s public relations officer in the city, whom Israel believed was the organiser of this attack¹²⁷¹. Ghassan Kanafani who was also a

¹²⁶⁴ The phrase "perhaps even kill" is a result of Katz's next sentence which reads, "Arafat, not then as famous as today, had slipped through Israeli hands in East Jerusalem and the affluent city of Ramallah in 1967 and his capture [or murder] was given serious priority'. [his brackets] Katz S.M. *Guards Without Frontiers: Israels War Against Terrorism*. (Arms and Armour. London. 1990). p195.

¹²⁶⁵ Melman Y. and Raviv D. *Every Spy a Prince*. (Houghton Mifflin. Boston. 1990.)p169. Israel devised a philosophy that only leaders of small terrorist groups would be targetted. Melman Y. and Raviv D. *Every Spy a Prince*. (Houghton Mifflin. Boston. 1990.). p398

¹²⁶⁶ Cited by Katz S.M. *Guards Without Frontiers: Israels War Against Terrorism*. (Arms and Armour. London. 1990). p195.

¹²⁶⁷ Katz S.M. *Guards Without Frontiers: Israels War Against Terrorism*. (Arms and Armour. London. 1990). p195.

¹²⁶⁸ Deacon merely describes it as an aborted attempt. Deacon R. *Israeli Secret Service*.(Hamish Hamilton. London.1979.). p227. In contrast Black and Morris claim that the Israeli's launched a rocket attack at his Beirut appartment. Black I. and Morris B. *Israel's Secret Wars: The United History of the Israeli Intelligence*. (Hamish Hamilton. London. 1991.). p272.

¹²⁶⁹ Katz S.M. *Guards Without Frontiers: Israels War Against Terrorism*. (Arms and Armour. London. 1990). p35.

¹²⁷⁰ Deacon R. *Israeli Secret Service*. (Hamish Hamilton. London.1979.).p228. He puts the date 8th July 1972.

¹²⁷¹ Deacon R. *Israeli Secret Service*. (Hamish Hamilton. London.1979.).p229. Katz described him as "a member of the PFLP's Central Command and one of the planners of

poet, novelist and intellectual, and according to Katz, a member of P.F.L.P.'s central command¹²⁷², was killed as he started his car, as was his seventeen year-old niece, who happened to be with him¹²⁷³. Soon after this incident a letter bomb injured Bassam Abu Sherif who had been ordered to take over Kanafani's role¹²⁷⁴. According to Katz, such attacks were not declared as official Israeli policy, but they served as effective reminders to the P.F.L.P. that they were not immune from the long arm of Israeli justice¹²⁷⁵.

The number of strikes by Israel against specific individuals can be seen to have escalated dramatically following the killing of Israeli athletes by 'Black September' at the Munich Olympic games in 1972. According to Black and Morris, the Munich massacre marked a turning-point in Israel's war against Palestinian terrorism. The Israeli Prime Minister Golda Meir decided that the time had come for wholesale vengeance, not just for its own sake, but as a deterrent¹²⁷⁶. Whilst Melman and Raviv have claimed that "the mission was not to capture anyone. It was out-and-out revenge -to terrorise the terrorists"¹²⁷⁷. She authorised the *Mossad* to assassinate the leaders of Black September, or at least those deemed directly responsible for Munich¹²⁷⁸. During the ten months

the Lod airport massacre"Katz S.M. *Guards Without Frontiers: Israels War Against Terrorism*. (Arms and Armour. London. 1990).p35.

1272 Katz S.M. *Guards Without Frontiers: Israels War Against Terrorism*. (Arms and Armour. London. 1990).p35

1273 Deacon R. *Israeli Secret Service*. (Hamish Hamilton. London.1979.). p229.

1274 Deacon puts the attack at one or two days later. Deacon R. *Israeli Secret Service*. (Hamish Hamilton. London.1979.). p229, whilst Black and Morris put it several days later. Black I. and Morris B. *Israel's Secret Wars: The United History of the Israeli Intelligence*. (Hamish Hamilton. London. 1991.).p272. In contrast Katz puts it a six weeks later. Katz S.M. *Guards Without Frontiers: Israels War Against Terrorism*. (Arms and Armour. London. 1990). p36.

1275 Katz S.M. *Guards Without Frontiers: Israels War Against Terrorism*. (Arms and Armour. London. 1990). p36.

1276 Black I. and Morris B. *Israel's Secret Wars: The United History of the Israeli Intelligence*. (Hamish Hamilton. London. 1991.). p272.

1277 Melman Y. and Raviv D. *Every Spy a Prince*. (Houghton Mifflin. Boston. 1990.). p186.

1278 Black I. and Morris B. *Israel's Secret Wars: The United History of the Israeli Intelligence*. (Hamish Hamilton. London. 1991.).p272. Katz wrote that according to foreign sources, Mossad was required to obtain the personal go-ahead from Prime Minister Meir who chaired a secret tribunal chaired by Meir, Defence Minister Moshe Dayan and Foreign Minister Yigal Allon, before any attempt was made on the life of a Black September leader and, according to Katz other foreign sources, the authorization for every operation was obtained from . Katz S.M. *Guards Without Frontiers: Israels War Against Terrorism*. (Arms and Armour. London. 1990). p40.

following Munich, at least nine men associated by the Israelis with Palestinian terrorism were killed in violent circumstances¹²⁷⁹. This whole series of events would become to be known as the 'War of the Spooks'¹²⁸⁰ as the P.L.O. in turn killed Israeli agents¹²⁸¹.

It can be suggested that the start of this period is marked by a bomb explosion in an Arab book shop in Paris, on 4 October 1972. According to Deacon this was planted by an 'avenger squad' named 'Masada', although Israel denied all knowledge¹²⁸². Twelve days later Wadal Adel Zwaiter¹²⁸³, the P.L.O.'s representative in Rome and a well known writer¹²⁸⁴, was shot dead in the city, by what Katz described¹²⁸⁵ as two unobtrusive men standing in lobby of block of flats, who'd been driven by blonde female in a Fiat 125. According to Deacon, Zwaiter was held responsible for the bomb explosion aboard an *El Al* flight the previous August, and considered involved in the Munich massacre¹²⁸⁶. Katz similarly claimed that he was believed to be mastermind behind several unsuccessful attempts to blow *El Al* planes in the air as well as being "Black September's operations chief in Italy"¹²⁸⁷. However following his enquiries for the B.B.C. television series "*States of Terror*", the investigative journalist Peter Taylor claimed that Zwaiter "was not, as

¹²⁷⁹ Black I. and Morris B. *Israel's Secret Wars: The United History of the Israeli Intelligence*. (Hamish Hamilton. London. 1991.).p273. Peter Taylor on the B.B.C. Programme: *States of Terror*, BBC1. 24 November. 1993 said, "The Mossad, Israel's secret intelligence service became state assassin"and ten [Palestinians] were killed across Europe and Middle East in a year.

¹²⁸⁰ "But Arafat's Fatah could not stand by and let the Mossad wipe out the PLO's leadership. Fatah struck back at a cafe in Brussels, where Zadok Kaffir was meeting an agent. It was the beginning of what would be known as the 'war of the spooks'. B.B.C. Programme: *States of Terror*, BBC1. 24 November. 1993.

¹²⁸¹ Deacon wrote "In this period Arab 'liquidators' disposed of at least three Mossad agents by killings which were made to look like accidents". Deacon R. *Israeli Secret Service*. (Hamish Hamilton. London.1979.). p233

¹²⁸² Deacon R. *Israeli Secret Service*. (Hamish Hamilton. London.1979.). p231. He suggests that it was not Israel.

¹²⁸³ Deacon uses this spelling and describes him as a Palestinian poet. Deacon R. *Israeli Secret Service*. (Hamish Hamilton. London.1979.).p231. Katz called him Wael Zwaiter. Katz S.M. *Guards Without Frontiers: Israels War Against Terrorism*. (Arms and Armour. London. 1990). p36.

¹²⁸⁴ B.B.C. Programme: *States of Terror*, BBC1. 24 November. 1993.

¹²⁸⁵ Katz S.M. *Guards Without Frontiers: Israels War Against Terrorism*. (Arms and Armour. London. 1990).p41. He says that it was a red Fiat, Taylor says it was a green one. Taylor P. *State of Terror*. (B.B.C. Books. London. 1993.) p18.

¹²⁸⁶ Deacon R. *Israeli Secret Service*. (Hamish Hamilton. London.1979.).p231.

¹²⁸⁷ Katz S.M. *Guards Without Frontiers: Israels War Against Terrorism*. (Arms and Armour. London. 1990).p41. He also claimed that a[n unnamed] Beirut newspaper described him as "one of our best combatants" after his death.

far as we can ascertain, in any way involved with Munich or perhaps even with terrorism"¹²⁸⁸.

On 8 December 1972 Dr. Mahmoud Hamshari, described as "the PLO's representative in Paris"¹²⁸⁹, "another Black September chief"¹²⁹⁰ who was also linked to an aborted raid on Ben Gurion airport¹²⁹¹, was killed by a telephone bomb in his apartment in Paris.¹²⁹² Disguised as a telephone engineer, an Israeli agent had managed to fit explosives in the ear piece of his telephone following the 'accidental' damage of telephone wires leading to Hamshari's apartment by 'plumbers'¹²⁹³. This was subsequently activated by a high pitched buzz once Hamshari answered the telephone¹²⁹⁴. However yet again Peter Taylor "found no evidence that Hamshari was directly involved in Munich"¹²⁹⁵.

On 25 January 1973, Hassain Abad Al-Chir, allegedly Palestinian link-man with the KGB in Cyprus was killed by radio bomb planted by *Mossad* team in Olympic Hotel in Nicosia¹²⁹⁶. On 6 April 1973, Dr. Basil Al-

¹²⁸⁸ B.B.C. Programme: States of Terror, BBC1. 24 November. 1993. To which Yariv [who he] Yariv replied "Well, as far as I can remember, there was some involvement on his part in terrorist activities, not in operation, but in terrorist activities, supplying, helping, that is support activities." Yariv " Well, you must remember the situation. Activity went on, on their part. The only way we, the only way we thought we could stop it -we didn't have any interest in going around killing people, we had an interest in stopping the activity- was to kill people in leadership roles. It worked, in the end it worked"

¹²⁸⁹ B.B.C. Programme: States of Terror, BBC1. 24 November. 1993. Katz similarly called him the PLO's official representative in France. Katz S.M. *Guards Without Frontiers: Israels War Against Terrorism*. (Arms and Armour. London. 1990). p41

¹²⁹⁰ Deacon R. *Israeli Secret Service*, (Hamish Hamilton, London, 1979), p232. According to Katz, he was Black September's second in command in Paris. Katz S.M. *Guards Without Frontiers: Israels War Against Terrorism*. (Arms and Armour. London. 1990). p41.

¹²⁹¹ Katz S.M. *Guards Without Frontiers: Israels War Against Terrorism*. (Arms and Armour. London. 1990). p42.

¹²⁹² Deacon R. *Israeli Secret Service*. (Hamish Hamilton. London. 1979.). p232. Died 9 January 1973. Katz S.M. *Guards Without Frontiers: Israels War Against Terrorism*. (Arms and Armour. London. 1990). p42.

¹²⁹³ Katz S.M. *Guards Without Frontiers: Israels War Against Terrorism*. (Arms and Armour. London. 1990). p42.

¹²⁹⁴ Katz S.M. *Guards Without Frontiers: Israels War Against Terrorism*. (Arms and Armour. London. 1990). p42.

¹²⁹⁵ B.B.C. Programme: States of Terror, BBC1. 24 November. 1993.

¹²⁹⁶ Deacon R. *Israeli Secret Service*. (Hamish Hamilton. London. 1979.). p232/233. Also Black I. and Morris B. *Israel's Secret Wars: The United History of the Israeli Intelligence*. (Hamish Hamilton. London. 1991.). p273. Katz notes that on 24 January 1973, Abd el Hir, allegedly the Black September station chief in Cyprus and K.G.B. agent was killed after ultra sonic radio transmitter set off explosive devices in the

Kubaissi, a professor at the American University in Beirut, was shot dead at point-blank range in Paris¹²⁹⁷. According to Deacon, he was believed to have been one of the organisers of explosives supplies for the Arab terrorists.¹²⁹⁸ Whilst Katz claimed that his responsibilities included maintaining a proper state of preparedness of Black September's vast arsenal, overseeing communications, and supervising safe houses¹²⁹⁹. In the early hours of 12 April 1973, Mousa Abu Zaiad, a senior Black September terrorist, was killed by an incendiary device in his hotel room in Athens¹³⁰⁰. According to foreign sources the Israelis hinted that it was a *Mossad* operation¹³⁰¹.

Then in the middle of the month, Mohamed Yusif Najjar, Kemal A'dwan and Kamal Nasser were all killed by the Israelis as part of Operation 'Springtime of Youth'. Described as *Mossad*'s biggest and most successful 'avenger squad' operation¹³⁰², According to Katz the operation:

"had four primary objectives which included the destruction of the headquarters of the Democratic Front for the Liberation of Palestine (DFLP) and the *el-Fatah* office responsible for operations in Israel proper. The principal targets, however, were three top Black September officers: Mohamed Najjar (also known as Abu Yusef), the *el-Fatah* and Black September operations and intelligence genius behind most of their terrorist attacks world-wide, including the assassination of Jordanian Prime Minister Tal, the Munich massacre and the Bangkok fiasco; Kamal A'dwan, a senior *el-Fatah* officer responsible for running terrorist cells in the West Bank and the Gaza Strip; and Kamal Nasser, the official spokesman for the

mattress of hotel bed in Olympic Hotel. Katz S.M. *Guards Without Frontiers: Israel's War Against Terrorism*. (Arms and Armour. London. 1990). p43.

1297 Deacon R. *Israeli Secret Service*. (Hamish Hamilton. London.1979.). p233

1298 Deacon R. *Israeli Secret Service*. (Hamish Hamilton. London.1979.). p233.

1299 Katz S.M. *Guards Without Frontiers: Israel's War Against Terrorism*. (Arms and Armour. London. 1990). p43.

1300 Katz S.M. *Guards Without Frontiers: Israel's War Against Terrorism*. (Arms and Armour. London. 1990).p45-46. Interestingly he notes that Salameh was planning a major operation in Cyprus, in response to the mistaken Israeli downing of a Libyan passenger aircraft on 21 February 1973. Deacon notes that on 9 April Mossad killed Zaiad Muchasi, the new Palestinian link-man with the KGB, with a bomb. Deacon R. *Israeli Secret Service*. (Hamish Hamilton. London.1979.). p233. This has not been placed in the main text for fear it is actually the same person as Mousa Abu Zaiad.

1301 Katz S.M. *Guards Without Frontiers: Israel's War Against Terrorism*. (Arms and Armour. London. 1990). p46.

1302 Deacon R. *Israeli Secret Service*. (Hamish Hamilton. London.1979.).p233.

Palestinian Liberation Organisation and a high-ranking Black September officer."¹³⁰³

Conveniently all three lived in two adjacent blocks of flats in Beriut¹³⁰⁴. Since the start of the month *Mossad* agents had arrived at a number of hotels over a number of days under forged passports from various European countries¹³⁰⁵. They reconnoitred the target and landing spot for the joint *Mossad* -I.D.F. commando raid¹³⁰⁶ against Black September. On the night of the attack these agents covered the landing of the 8 commandos at Ramlet-el-Beida and provided them with the cars to make the journey to Beirut¹³⁰⁷. Once at there target the Israelis "dressed in a combination of civilian clothing, female drag, and hippie garb of the Woodstock generation" succeeded in silencing the terrorists guarding the blocks of flats and eliminating the three men on their list¹³⁰⁸.

On 28 June 1973, Muhammad Boudia, believed to be Black September's operations chief in Europe¹³⁰⁹ was blown up by a bomb placed in his car in Paris¹³¹⁰. Then on 21 July 1973, Ahmed Bouchiki a Moroccan waiter at a health farm¹³¹¹ was mistakenly shot dead in a street in Lillehammer, Norway by a man and woman from *Mossad* ¹³¹². The Israelis had mistaken him for Ali Hassan Salameh, whom the Israeli's believed was the terrorist leader responsible for the Munich

¹³⁰³ Katz S.M. *Guards Without Frontiers: Israel's War Against Terrorism*. (Arms and Armour. London. 1990). p44.

¹³⁰⁴ Katz S.M. *Guards Without Frontiers: Israel's War Against Terrorism*. (Arms and Armour. London. 1990). p44.

¹³⁰⁵ Deacon R. *Israeli Secret Service*. (Hamish Hamilton. London.1979.). p234.

¹³⁰⁶ Katz S.M. *Guards Without Frontiers: Israel's War Against Terrorism*. (Arms and Armour. London. 1990).p41 He says it was against Black September.

¹³⁰⁷ Deacon R. *Israeli Secret Service*. (Hamish Hamilton. London.1979.). p234.

¹³⁰⁸ Katz S.M. *Guards Without Frontiers: Israel's War Against Terrorism*. (Arms and Armour. London. 1990). p44-45.

¹³⁰⁹ Katz S.M. *Guards Without Frontiers: Israel's War Against Terrorism*. (Arms and Armour. London. 1990). p46.

¹³¹⁰ Black I. and Morris B. *Israel's Secret Wars: The United History of the Israeli Intelligence*. (Hamish Hamilton. London. 1991.).p275. Katz S.M. *Guards Without Frontiers: Israel's War Against Terrorism*. (Arms and Armour. London. 1990). p46.

¹³¹¹ One terrorologist writing a book on Carlos the Jackal described the victim as "a Moroccan disc jokey with a connection to Al-Fatah", and in a later report as "the PLO representative in Scandanavia". Smith C. *Portrait of a Terrorist*. (Andre Deutsch. London. 1976. (no page refernce). Cited by Deacon R. *Israeli Secret Service*. (Hamish Hamilton. London.1979.) .p243.

¹³¹² Deacon R. *Israeli Secret Service*.(Hamish Hamilton. London.1979.). p242

massacre¹³¹³. Six Israeli operatives were captured by the authorities¹³¹⁴.

The killings of specific individuals can be seen to have declined significantly following the Prime Minister Yitzhak Rabin's¹³¹⁵ order to *Mossad* to cease the 'assassination' of Palestinian terrorists in September 1974, although they did not come to an end. The head of PLO office in Paris was killed by the Israelis on 4 January 1977 according to Deacon¹³¹⁶, and Salameh who the Israeli's considered as the terrorist leader responsible for the Munich massacre¹³¹⁷ was finally killed by the Israelis in Beirut on 22 January 1979. He was blown up as he was driven past a Volkswagen Golf containing explosives which had been parked and detonated by a male and female operative disguised as a British tourist and spinster respectively¹³¹⁸.

On 9 October 1981, Maghd Abu Shrar, PLO Information Minister in Rome, was killed by an explosion in room 319 of the Flora Hotel¹³¹⁹. According to Katz "speculation and certain facts" implicate *Mossad*. Notably a mysterious and unusual delivery of an extra pillow was made to his room even though Abu Shrar always slept with only a blanket¹³²⁰.

On 14 February 1988, "the Israelis went into action"¹³²¹ again. Mahmed Tamimi, Marwan Qjali, and Mahmad Bahias were killed in Cyprus. All three have been described as sporting the rank of colonel in *Al-Fatah*

¹³¹³ Deacon R. *Israeli Secret Service*. (Hamish Hamilton. London. 1979.). p238.

¹³¹⁴ Black I. and Morris B. *Israel's Secret Wars: The United History of the Israeli Intelligence*. (Hamish Hamilton. London. 1991.). p276.

¹³¹⁵ Katz cites O'Ballance E. *Language of Violence: The Blood Politics of Terrorism* (Presido Press. San Rafael. 1979.).p230. Katz S.M. *Guards Without Frontiers: Israel's War Against Terrorism*. (Arms and Armour. London. 1990). p50.

¹³¹⁶ Deacon R. *Israeli Secret Service*. (Hamish Hamilton. London. 1979.). p249.

¹³¹⁷ Deacon R. *Israeli Secret Service*. (Hamish Hamilton. London. 1979.). p238.

¹³¹⁸ Katz S.M. *Guards Without Frontiers: Israel's War Against Terrorism*. (Arms and Armour. London. 1990).p51. He also claims that the renewal of the tactic was due to a change in government. Black I. and Morris B. *Israel's Secret Wars: The United History of the Israeli Intelligence*. (Hamish Hamilton. London. 1991.). p277.

¹³¹⁹ Katz S.M. *Guards Without Frontiers: Israel's War Against Terrorism*. (Arms and Armour. London. 1990).p58-9.

¹³²⁰ Katz S.M. *Guards Without Frontiers: Israel's War Against Terrorism*. (Arms and Armour. London. 1990). p59.

¹³²¹ Melman Y. and Raviv D. *Every Spy a Prince*. (Houghton Mifflin. Boston. 1990.). p390.

1322. Whilst Black and Morris describe Qiali, as a colonel on the P.L.O.'s military council, Buhais as an official of the P.L.O.'s Occupied Homelands Office and Tamimi as the head of one of *Fatah'* s most important operational and intelligence branches, known as Committee 77. He was also believed to be personally responsible for planning the killing of six Israeli settlers at Beit Hadassah in 1980 and for a grenade attack on Israeli soldiers at the wailing wall¹³²³ in October 1986. Once again Israel publicly denied any involvement.¹³²⁴

In the evening of 15 April 1989 approximately thirty members of *Sayeret Mat'kal* landed on a tourist beach near Tunis aboard rubber dinghies¹³²⁵. The advance party of seven *Mossad* operatives using false Lebanese passports¹³²⁶ were awaiting on the shore. They had rented two Volkswagen minibuses and a Peugeot station wagon¹³²⁷. Two of the vehicles "packed with troops in civilian clothes, holding their Uzi sub-machine guns and pistols between their legs, drove to the target" and waited. Their job was to jam the phones and to protect the main mission¹³²⁸. The whole operation was co-ordinated from the communications systems on board an Israeli Boeing 707, which had pretended to be an *El-Al* flight¹³²⁹. Eventually Abu Jihad went to bed. The house was stormed and Abu Jihad, 2 bodyguards and driver were

1322 Katz S.M. *Guards Without Frontiers: Israel's War Against Terrorism*. (Arms and Armour. London. 1990.). p63.

1323 Black I. and Morris B. *Israel's Secret Wars: The United History of the Israeli Intelligence*. (Hamish Hamilton. London. 1991.). p468.

1324 Katz S.M. *Guards Without Frontiers: Israel's War Against Terrorism*. (Arms and Armour. London. 1990.). p63.

1325 Melman Y. and Raviv D. *Every Spy a Prince*. (Houghton Mifflin. Boston. 1990.). p396. Katz puts the figure at 30-40 he also notes Flotilla 13 commandos. Katz S.M. *Guards Without Frontiers: Israel's War Against Terrorism*. (Arms and Armour. London. 1990.). p189.

1326 Black I. and Morris B. *Israel's Secret Wars: The United History of the Israeli Intelligence*. (Hamish Hamilton. London. 1991.). p470. Melman Y. and Raviv D. *Every Spy a Prince*. (Houghton Mifflin. Boston. 1990.). p395.

1327 Melman Y. and Raviv D. *Every Spy a Prince*. (Houghton Mifflin. Boston. 1990.).395. Katz described the vehicles as Peugeot 305, 2 Volkswagen Minibuses. Katz S.M. *Guards Without Frontiers: Israel's War Against Terrorism*. (Arms and Armour. London. 1990.).p192.

1328 Melman Y. and Raviv D. *Every Spy a Prince*. (Houghton Mifflin. Boston. 1990.). p396.

1329 Melman Y. and Raviv D. *Every Spy a Prince*. (Houghton Mifflin. Boston. 1990.). p396.

killed¹³³⁰. Katz suggests that the commandos would have worn black Nomex coveralls¹³³¹, and he notes reports that some wore the uniforms of Tunisian National Guards¹³³². The Israelis said that Abu Jihad had planned attack on civilian bus in the Negev desert near the Dimona nuclear reactor in March in which three people were killed, and scores of other terrorist attacks¹³³³. Whatever Abu Jihad's political functions, he was known by the Israelis as the man responsible for the 1978 Country Club raid and a number of recent terrorist actions, as well as the chief P.L.O. co-ordinator with the leaders of the *intifada* ¹³³⁴. It has been suggested that this was the fourth attempt on his life¹³³⁵.

According to Melman and Raviv, the Israelis could have kept the entire matter secret, but "it would not then have had the desired deterrent effect". Therefore official Israeli sources provided two American news outlets, N.B.C. Television and the *Washington Post*, with "fairly complete accounts of what the *Mossad* and the army had done"¹³³⁶. They also note that *Aman* (military intelligence) commander Sharak was quoted in that week's issues of the official army magazine *Ba-Machaneh* (In Camp), as saying: "[a]nyone directing terrorism is a suitable target for elimination"¹³³⁷. In contrast Black and Morris declared that Israel followed its usual practice and refused to admit officially that it was responsible for the killing. Yet even they went on to say that "the denials convinced no one", and when, contrary to normal practice, the censor permitted for publication press reports about the victim and the operation, Black and Morris note that: "this was universally taken to

¹³³⁰ Amend and Beck cite O'Brien 'Reprisals, Deterrence and Self Defence in Counter terror Operations' *Va. J. of Int'l L.* 1990 p462 . Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.). p150.

¹³³¹ Katz S.M. *Guards Without Frontiers: Israel's War Against Terrorism*. (Arms and Armour. London. 1990.). p190.

¹³³² Katz S.M. *Guards Without Frontiers: Israel's War Against Terrorism*. (Arms and Armour. London. 1990.). p190.

¹³³³ Black I. and Morris B. *Israel's Secret Wars: The United History of the Israeli Intelligence*. (Hamish Hamilton. London. 1991.). p470.

¹³³⁴ O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p168.

¹³³⁵ Katz S.M. *Guards Without Frontiers: Israel's War Against Terrorism*. (Arms and Armour. London. 1990.).p193. The others being in 1978,1980,1982.

¹³³⁶ Melman Y. and Raviv D. *Every Spy a Prince*. (Houghton Mifflin. Boston. 1990.). p397

¹³³⁷ Melman Y. and Raviv D. *Every Spy a Prince*. (Houghton Mifflin. Boston. 1990.). p397-8

imply confirmation"¹³³⁸. Black and Morris also claimed that what mattered was "the message had been sent": a combination of Israel's long and deadly arm with the useful addition of encouraging fear and suspicion of spies and traitors in Palestinian ranks¹³³⁹.

Israel did not formally participate in the Security Council meeting which condemned the attack and accused Israel of it which in Resolution 611, of 25 April 1988¹³⁴⁰. It has also been suggested that less than six months earlier the Israelis made an unsuccessful attempt to kill Abu-Jibril the leader of the Popular Front for the Liberation of Palestine -General Command¹³⁴¹. In 1989 the *Mossad* was also alleged to have mounted a campaign against scientists building rockets for Iraq and Egypt¹³⁴².

Finally within this particular classification it is worth noting that on February 16 1992, two Israeli helicopter gunships attacked a seven vehicle motorcade in Southern Lebanon. The Shi'ite Imam and leader of the *Hezbollah*, Sheikh Abbas Musawi, his wife, six year old son, and five bodyguards were killed in the rocket assault¹³⁴³. The Israeli government publicly admitted its action¹³⁴⁴. Israeli Defence Minister Moshe Arens called Musawi a "man with lots of blood on his hands"¹³⁴⁵

¹³³⁸ Black I. and Morris B. *Israel's Secret Wars: The United History of the Israeli Intelligence*. (Hamish Hamilton. London. 1991.).p470-1. Arend and Beck similarly wrote, "Israel's involvement was broadly conceded, even by Israel's supporters" Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.).p150. In their footnotes Arend and Beck wrote that "although Israel did not officially admit responsibility, the assassination was nonetheless an Israeli operation" O'Brien 'Reprisals, Deterrence and Self Defence in Counter terror 'Operations Va. *Journal of international Law* 1990. p462.

¹³³⁹ Black I. and Morris B. *Israel's Secret Wars: The United History of the Israeli Intelligence*. (Hamish Hamilton. London. 1991.). p471-2.

¹³⁴⁰ Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.). p151.

¹³⁴¹ Katz S.M. *Guards Without Frontiers: Israel's War Against Terrorism*. (Arms and Armour. London. 1990.). p198-202.

¹³⁴² Black and Morris cite *Davar*, 28 April 1989. Black I. and Morris B. *Israel's Secret Wars: The United History of the Israeli Intelligence*. (Hamish Hamilton. London. 1991.).p503.

¹³⁴³ Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.). p151.

¹³⁴⁴ Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.). p150.

¹³⁴⁵ Arend and Beck cite Israeli Raid Kills Hezbollah Leader ' Washington Post Feb 17 1992 a1, col 4. Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.). p151.

and *Hezbollah* a "murderous, terrorist organisation"¹³⁴⁶ characterised his state's forcible action against Sheikh Musawi as both "an attack intended to hurt Hezbollah"¹³⁴⁷ and "a message to all the terrorist organisations [that] whoever opens an account with us will have the account closed by us"¹³⁴⁸. Interestingly Arend and Beck note suggestions that although Sheikh Musawi was killed, the mission's original aim may have been to kidnap Musawi and bring him trial in Israel or exchange for an Israeli P.O.W. believed held by the *Hezbollah*¹³⁴⁹. According to one account, the operation went wrong when the missiles intended to take out the vehicle carrying his bodyguards hit Musawi's car¹³⁵⁰. In this case then this example could be placed within the section on attempted abductions. Although Palestinian spokeswoman Hanan Ashrawi asked rhetorically: "To use the air force and state policy to kill women and children, that's not terrorism?"¹³⁵¹, there was no discussion of the incident at the Security Council¹³⁵².

The Application of the Various Definitions of (State) Terrorism.

Unlike the assessment of kidnappings by Israel, any discussion of its killing of individuals is "inherently problematic" in so far as many of these actions have typically remained unacknowledged by their

¹³⁴⁶ Arend and Beck cite Israelis Kill Chief of Pro-Iran shiites in South Lebanon' N.Y. Times Feb 17 1992. A9, col 1. Arend A.C. and Beck R.J. International Law and the Use of Force: Beyond the UN Charter Paradigm. (Routledge. London. 1993.). p151.

¹³⁴⁷ Arend and Beck cite Israeli Raid Kills Hezbollah Leader ' Washington Post Feb 17 1992 a1, col 4. Arend A.C. and Beck R.J. International Law and the Use of Force: Beyond the UN Charter Paradigm. (Routledge. London. 1993.). p151.

¹³⁴⁸ Arend and Beck cite Israelis Kill Chief of Pro-Iran shiites in South Lebanon' N.Y. Times Feb 17 1992. A9, col 2. Arend A.C. and Beck R.J. International Law and the Use of Force: Beyond the UN Charter Paradigm. (Routledge. London. 1993.). p151.

¹³⁴⁹ 'Murder by Mistake?', *Newsweek*. Mar.20. 1992.p6. cited by Arend A.C. and Beck R.J. International Law and the Use of Force: Beyond the UN Charter Paradigm. (Routledge. London. 1993.). p151.

¹³⁵⁰ 'Murder by Mistake?', *Newsweek*. Mar.20. 1992. p6. cited by Arend A.C. and Beck R.J. International Law and the Use of Force: Beyond the UN Charter Paradigm. (Routledge. London. 1993.). p151-152.

¹³⁵¹ H. Ashrawi cited by Arend and Beck. Israelis Kill Chief of Pro-Iran Shiites in South Lebanon' N.Y. Times Feb 17 1992. A9, col 2. Arend A.C. and Beck R.J. International Law and the Use of Force: Beyond the UN Charter Paradigm. (Routledge. London. 1993.). p152.

¹³⁵² Arend A.C. and Beck R.J. International Law and the Use of Force: Beyond the UN Charter Paradigm. (Routledge. London. 1993.). p152.

perpetrators¹³⁵³. Following this comment by Arend and Beck, the immediate question becomes, 'Does each definition requires this open acknowledgement?'. This author's definition does, but only to the extent that if the target audience does not know who carried out such an attack, then it cannot receive any message that the terrorist is trying to send. It is of course possible for the terrorist to make its responsibility known to the audience whose behaviour it intends to modify, without it being made known to the wider world. This author does not know whether this was the case in all of the incidents noted above, although it does seem that the Israeli's made the fact know to the wider world in the case of Musawi and Boudi and Zaiad, and Abu-Jibril, the latter two out of choice.

As for the rest of the incidents under scrutiny it may just be that Israel is happy not openly admitting its involvement in individual incidents, for such an approach would enable it to avoid the international condemnation of its actions which would follow such a confession. Ironically support for this view can be seen in the general comments made by the then Defence Minister Moshe Arens "whoever opens an account with us will have the account closed by us"¹³⁵⁴, for it can be seen as indicating a willingness to be associated with such actions without taking the blame, a kind of plausible responsibility (rather than the usual plausible deniability!). Taking the words used by Katz's to describe the killings during the 'War of the Spooks', such attacks were not declared as official Israeli policy, but they served as effective reminders to the P.L.O. that they were not immune from the long arm of Israeli justice¹³⁵⁵. The assessment therefore will take the view that the Israeli's (and Palestinians) made it clear to each other for without this the War of the Spooks should not have continued for so long.

This issue aside, the majority of the acts examined above do not constitute acts of terrorism according to this author's definition because of the non-innocent nature of the targets, that is the victims are

¹³⁵³ Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.). p150.

¹³⁵⁴ Arend and Beck cite Israelis Kill Chief of Pro-Iran shiites in South Lebanon' N.Y2. Times Feb 17 1992. A9, col 2. Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.). p151.

¹³⁵⁵ Katz S.M. *Guards Without Frontiers: Israels War Against Terrorism*. (Arms and Armour. London. 1990). p36.

generally considered to be legitimate targets and therefore the actions cannot constitute acts of terrorism. Again this relies upon an acceptance of Israel's views. As for the killing of the 'innocent' seventeen year-old niece of Kanafani and the 'innocent' wife and child of Sheikh Musawi, both of these constitute 'acceptable' collateral damage, if the Israelis genuinely believed that Kanafani was a member of the P.F.L.P.'s central command¹³⁵⁶, or that Sheikh Musawi was "man with lots of blood on his hands"¹³⁵⁷.

There are of course exceptions and debatable points here. There seems little doubt that the Moroccan waiter Boudia was not a legitimate target and therefore the attack on him was (potentially) terrorist even by this author's definition. However this attack against this illegitimate target does not constitute state terrorism because the Israelis genuinely believed they were targeting a combatant and this author takes the view that it is the intent which is important. Consistency would of course mean that similar attacks on innocents mistakenly made by sub-state groups would avoid the terrorism label. Whilst the attacks against scientists building rockets for Iraq and Egypt in 1989 do not constitute state terrorism, for the scientists constitute legitimate targets when at work, they would do so if threats of violence were made against their families, as allegedly occurred during Israel's campaign against scientists working for the Egyptians in the early 1960's¹³⁵⁸.

Perhaps the most debatable killings within the selection noted above are those of Zvater and Hamshari. This is not simply due to the fact that the investigative journalist Peter Taylor claimed that Zvater "was not, as far as we can ascertain, in any way involved with Munich or perhaps even with terrorism"¹³⁵⁹ and he "found no evidence that Hamshari was directly involved in Munich"¹³⁶⁰ following his enquires for the B.B.C. television series *"States of Terror"*. The debate is not a question of who

¹³⁵⁶ Katz S.M. *Guards Without Frontiers: Israel's War Against Terrorism*. (Arms and Armour. London. 1990). p35.

¹³⁵⁷ Arend and Beck cite Israeli Raid Kills Hezbollah Leader ' Washington Post Feb 17 1992 a1, col 4. Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.). p151.

¹³⁵⁸ Melman Y. and Raviv D. *Every Spy a Prince*. (Houghton Mifflin. Boston. 1990.).p124

¹³⁵⁹ B.B.C. Programme: *States of Terror*, BBC1. 24 November. 1993.

¹³⁶⁰ B.B.C. Programme: *States of Terror*, BBC1. 24 November. 1993.

does one believe, the B.B.C.'s investigative reporter or the Israelis, instead it results from comments made by the then special advisor on terrorism to the Israeli Prime Minister's. In reply to Taylor's comments that he could not find any evidence of Zvater's involvement with Munich or perhaps even with terrorism, General Yariv said that Zvater was involved "not in operations, but in terrorist activities, supplying, helping, let us say 'support' activities"¹³⁶¹. Moreover in reply to Taylor's comment that Hamshari's involvement in P.L.O.'s activities was "very broad...He could have been a politician. He could have been a writer, a thinker, a supporter", General Yariv said "That, yes, but he was in a leadership position", and that justified his killing¹³⁶².

Yariv's statement raises the question of how does one define a (non-) combatant, and where or how to draw the line. As already noted within the conceptual part of the thesis this author allows attacks on the leadership of the enemy organisation, but only if the victim helped to order attacks or helped supply, train or arm the armed forces. Thus a line has to be drawn somewhere in terms of actions rather than mere membership or support. O'Brien took a similar view when he wrote:

"a purely political figure -e.g., a treasury minister or the equivalent - is not a military target. A defence minister might be a military target. A chief executive who, like the President of the United States, is commander -in -chief of the armed forces, might be considered a military target. However, the general practice of belligerents and conventional wisdom has tended to raise a blanket moral presumption against assassination without too much attention to these distinctions" ¹³⁶³

Again it is because the author gives the benefit of the doubt to Israel on the status of the victims and accepts that they are considered to be legitimate targets, that their killing cannot constitute acts of terrorism

¹³⁶¹ Yariv quoted by Taylor P. *States of Terror*. (B.B.C. Books. London. 1993.).p20.

¹³⁶² Yariv quoted by Taylor P. *States of Terror*. (B.B.C. Books. London. 1993.).p20.This differs slightly from the wording in B.B.C. Programme: States of Terror, BBC1. 24 November. 1993 where Yariv replied "Well, as far as I can remember, there was some involvement on his part in terrorist activities, not in operation, but in terrorist activities, supplying, helping, that is support activities".

¹³⁶³ O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p168.

in accordance with my definition. The immediate question to be answered then becomes 'Do these killings qualify as acts of terrorism in accordance with the other proposed definitions?'.

The use of violence involved in killing the alleged leaders of terrorist groups satisfies the P.T.A.'s demand that the use of violence is for political ends. The use of violence involved in killing individual terrorists satisfies Stohl and Lopez's demand that the purposeful act of violence aimed to create fear or compliant behaviour in the victim. On this occasions the aim was to instil fear in other members of the Palestinian groups. Taking the words used by Katz's to describe the killings during the 'War of the Spooks', such attacks were not declared as official Israeli policy, but they served as effective reminders to the P.L.O. that they were not immune from the long arm of Israeli justice¹³⁶⁴. Indeed in a chapter in which he uses the same definition¹³⁶⁵, Stohl described *Mossad's* assassinations of Palestinian agents in Cyprus, Algeria, Norway, Athens, Beirut and Paris as "a highly effective technique of political terrorism"¹³⁶⁶.

All of the killings noted above, with perhaps the exception of the accidental killing of Sheikh Musawi, qualify for the label of terrorism using the definition derived from Israel's P.T.O. . This is because they were all, "calculated to cause death or injury to a person".

Generally speaking with perhaps the exception of Hamshari, Zvaiter and Boudia such killings do not qualify in accordance with the U.S. definition because it requires that the premeditated, politically motivated violence be perpetrated against non-combatant¹³⁶⁷ targets. It

¹³⁶⁴ Katz S.M. *Guards Without Frontiers: Israel's War Against Terrorism*. (Arms and Armour. London. 1990). p36.

¹³⁶⁵ Stohl clearly notes that by such terrorism he meant: "The purposeful act or threat of violence to create fear and/or compliant behaviour in a victim and/or audience of the act or threat" Stohl M. 'International Dimensions of State Terrorism' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Connecticut. 1984.). pp43-58. p43.

¹³⁶⁶ Stohl M. 'International Dimensions of State Terrorism' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Connecticut. 1984.). pp43-58. p53.

¹³⁶⁷ U.S. State Department. *Patterns of Global Terrorism: 1993*. (Department of State Publication 10136, Office of the Secretary Office of the Coordinator for Counterterrorism.) states " For purposes of this definition, the term "noncombatant" is interpreted to include, in addition to civilians, military personnel who at the time of the

is impossible to say however whether the U.S. definition allows for collateral damage. However even if it did not and the wife and child of Sheikh Musawi constituted non-combatants, their deaths would still not qualify for the labels of terrorism, because the killings were made from Israeli helicopters, not by clandestine agents. The use, however, of covert agents to plant the bomb on Kanafani's car which killed him and his innocent niece would qualify for the U.S label. So if Zvaiter and Hamshari (or any of the others were considered to be non-combatants) then their killing by covert Israeli forces would qualify for the label in accord with the U.S. definition.

As for Schmid' and Jongman's definition the repeated nature of the action is surely evident even prior to the 'War of the Spooks'. There is evidence that in all but the attack of Sheikh Musawi and perhaps some of the attempts on the life of Yasser Arafat that the Israeli forces involved were operating in a clandestine, or at least semi-clandestine manner. For example Operation Springtime of Youth and the attack on Abu-Jihad involved the use of civilian clothing, whilst others such as the planting of bombs would have required the deception used by sub-state terrorists.

The question then to be answered becomes were the numerous direct targets of violence the main targets, or were they to be used primarily as a message generator? Here the problem of proving the intent of the perpetrator hinders any attempt to identify an act of terrorism. In terms of the killing of Abu-Jihad it is very difficult to say that he was not the main target of the attack even if it is plausible to claim that the aim was also to send a message as Black and Morris claimed. Therefore this assassination along with other attempts on the lives of Arafat and other leaders could not be labelled as terrorism in accordance with Schmid and Jongman's definition. As for the killing of those involved in the Munich massacres it appears difficult to say that the sending of a message to other Palestinian groups was the main reason for the attacks and not revenge. Such individual attempts on the lives of specific

incident are unarmed and/or not on duty. We also consider as acts of terrorism attacks on military installations or on armed military personnel when a state of military hostilities does not exist at the site, such as bombings against US bases in Europe or elsewhere".

individuals do not seem to fulfil the requirements of Schmid and Jongman's definition.

c. Military Strikes Against Bases and Property:

There is little doubt that there are far more acts that could be included in this section than there are in any, if not all, of the other categories, especially if one included the use of artillery and incursions. The aim here is to examine a number of them just as William O'Brien did in his chapter 'War-conduct Law in Israeli Counterterror Action'¹³⁶⁸. However whilst this assessment will examine most of those examined by O'Brien it will not be limited to just these, primarily because certain events have occurred after O'Brien published his work, but also because an analysis of all of his post 1967 incidents would involve a great deal of repetition in the assessment of essentially similar events¹³⁶⁹.

The first event to be examined is Israel's large scale attack involving tanks and air support from both helicopters and aircraft¹³⁷⁰ against P.L.O. positions in Karamah, Jordan on 21 March 1968. The aim of the I.D.F. was according to William O'Brien "to surround Karamah and kill or capture the bulk of the *fedayeen*"¹³⁷¹. The attack followed the deaths of two Israelis and the wounding of 28 children on a school bus¹³⁷² which hit a mine in the Negev three days earlier. The Israeli operation was not as much of a success as the Israelis had hoped despite their capture of the town and their claim to have killed 150 terrorists¹³⁷³. Many of the *fedayeen* escaped including Arafat¹³⁷⁴, while the *Fatah* troops, who

¹³⁶⁸ Chapter entitled "War-conduct Law in Israeli Counter Terrorist Actions" O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p148-172.

¹³⁶⁹ Specifically these are the cross border raids at Karamah, Es Salt, Post Munich Massacre Attacks of September 7-17, 1972, Israeli Operations following Kiryat Shemona, "Preventative" Air Raid, December 2, 1975, The Litani Operation, Israeli-PLO Hostilities July 10-14, 1981; Air Raid on PLO Headquarters, Tunis, Assassination of Khalil El Wazir/Abu Jihad, Israel's Conduct of Counterterror Operations.

¹³⁷⁰ Bowett D. 'Reprisals Involving Recourse to Armed Force'. *American Journal of International Law*. Vol. 66 (1).pp1-36. p11.

¹³⁷¹ O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p152.

¹³⁷² Statement of Prime Minister Eshkol, quoted by Tekoah (Israel), 1401st mtg. p6 cited by O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p151-22.

¹³⁷³ Bowett D. 'Reprisals Involving Recourse to Armed Force'. *American Journal of International Law*. Vol. 66 (1).pp1-36. p35.

¹³⁷⁴ O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p152.

fought in uniforms in organised units¹³⁷⁵, caused many Israeli casualties. According to O'Brien, the Israelis claimed, "with persuasive evidence" that Karamah's normal population had largely been displaced by the time of the battle¹³⁷⁶, although it included "some remaining non-combatant and civilian targets"¹³⁷⁷. Despite their pleas that they were carrying out action to defend the inhabitants of their territory and that the attacks from Jordanian territory broke the existing ceasefire agreements, the Israeli's were unanimously condemned by the Security Council. In Resolution 248 it condemned the reprisal as illegal and disproportionate¹³⁷⁸.

Israel carried out an air raid "against two terrorist bases in the [Es] Salt area"¹³⁷⁹ of Jordan on 4 August 1968, following a series of "intensive fedayeen terrorist attacks" in the West Bank and Israel¹³⁸⁰. Basing his estimate on reports of the funerals of the raids, Israel's *Tekoah* estimated that the 34 dead consisted of 28 Palestinian *fedayeen*, an Iraqi officer, a Jordanian officer and four Jordanian soldiers¹³⁸¹. In Resolution 256 the Security Council rejected Israel's claims of self-defence and unanimously condemned the reprisal as illegal and disproportionate¹³⁸².

Following the killings of eleven Israeli athletes at the Olympic village in Munich on 5 September 1972, Israel carried out a series of incursions into the Lebanon and Syria. Two I.D.F. company strength armour incursions, supported by helicopters were launched into Lebanon on September 7 1972, against P.L.O. targets up to one mile into Lebanon. The

1375 O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p151.

1376 O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p152.

1377 O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p153.

1378 Bowett D. 'Reprisals Involving Recourse to Armed Force'. *American Journal of International Law*. Vol. 66 (1).pp1-36. p35.

1379 The words of Israel's *Tekoah* (1434th mtg) p8 cited by O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p154.

1380 O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p153.

1381 The words of Israel's *Tekoah* (1437th mtg) p10 cited by O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p154.

1382 Bowett D. 'Reprisals Involving Recourse to Armed Force'. *American Journal of International Law*. Vol. 66 (1).pp1-36. p35.

next day, ten simultaneous strikes were made on P.L.O. bases deep into Lebanon and Syria. This was the largest Israeli Air Force operation since the war of 1967 and led to the downing of three Syrian aircraft and artillery exchanges with both the Syrians and Lebanese¹³⁸³. On 16 September, an I.D.F. armoured task force moved 12 miles across the Lebanese border and conducted a search-and-destroy operation against P.L.O. bases in the Ainata area¹³⁸⁴. At least 40 *fedayeen* were killed, 20 P.L.O. *fedayeen* and Lebanese soldiers captured and 130 houses "from which PLO fire had been received" were destroyed¹³⁸⁵. In a radio address, Israeli Chief of Intelligence Chaim Herzog said that it was up to the Lebanese government and people whether Israel would conduct more deep raids into their country¹³⁸⁶. Whilst O'Brien noted that: "[t]he purpose of the September 16 operation was to root out terrorists and to persuade Lebanese villagers in the area not to cooperate with them"¹³⁸⁷.

On the night of April 12-13, there was a further incursion by the I.D.F. into Lebanon, following the killing of 8 children and 10 adults at Kiryat Shermona the day before. It was in this context that Israel's Defence Minister Moshe Dayan issued one of the statements of Israeli policy which according to O'Brien "appears to call for countervalue attacks on locales from which PLO *fedayeen* operate"¹³⁸⁸. In detail Dayan declared:

"Our objectives this time were political, not military....We made all the villagers aware that....it is their business to go to their government and tell them they have to take care no terrorists cross the border into Israel. That was the message"¹³⁸⁹.

1383 O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p155.

1384 O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p155.

1385 O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p155.

1386 New York Times "Israelis Report That Armoured Force is Holding Ground Within Lebanon" September 17, 1972 cited by O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p155.

1387 O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p155.

1388 O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p156.

1389 Quoted in 29 U.N.SCOR (1766th mtg). p22 See New York Times "Dayan Says Raids Against Lebanon Will Be Continued" April 14, 1974. p1.col. 8; p3 col 3-6 cited by

Dayan also warned that if Lebanon did not control the P.L.O. Israel would continue its raids until all of southern Lebanon was a desert¹³⁹⁰. The Israeli raids were directed against villages from which the P.L.O. had launched their attack against Kiryat Shemona. Houses believed to have had a P.L.O. connection were dynamited¹³⁹¹, civilian casualties appear to have been minimal¹³⁹².

In early December of 1975 the I.A.F. launched a number of "preventative" air raids¹³⁹³. According to O'Brien the December attacks on P.L.O. bases located in refugee camps did not appear to be primarily based on specific military/security necessities but were carried out to make a political point. They came in the wake of a series of U.N. actions designed to support the P.L.O. and to enhance its position in U.N. debates¹³⁹⁴. One of these -that which occurred on December 5- caused large scale civilian damage¹³⁹⁵. The Security Council condemned the raids as particularly disproportionate and indiscriminate¹³⁹⁶.

Israel and the P.L.O. engaged in cross-border hostilities in Lebanon in July of 1981, following Begin's re-election, and the P.L.O.'s conventional build up¹³⁹⁷. On 10 July Israel bombed and strafed P.L.O. anti-aircraft gun emplacements and a convoy of vehicles mounted with Katyusha

O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p157.

1390 This warning was cited by Naffah (Lebanon), 29 U.N. SCOR (1766th mtg.). See *New York Times* "Dayan Says Raids Against Lebanon Will Be Continued" April 14, 1974. p1.col. 8; p3 col 3-6 cited by O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p156.

1391 O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p157.

1392 O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p157.

1393 O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p158.

1394 O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p158.

1395 O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p158.

1396 O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p158.

1397 Washington Post. 'Israeli Fear of Guerilla Buildup Triggered Beirut Strike'. Washington Post. July 25. 1981. A18. Cols. 1-6. Cited by O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p161-2.

rocket launchers, to which the P.L.O. responded¹³⁹⁸. Four days later the I.A.F. attacked P.L.O. ammunition dumps and training bases on the Mediterranean coast of southern Lebanon, leaving 6 P.L.O. and Lebanese villagers dead and 35 wounded. Then on the 16th following a P.L.O. reply the I.A.F. attacked a regional headquarters of the P.F.L.P. near Damour; an Arab Liberation Front headquarters south of Sidon; various training and terrorist departure bases south of Tyre; and three bridges used by the P.L.O. over the Zaharani river¹³⁹⁹. Finally, in what O'Brien describes as "one of the most controversial actions in Israel's war with the PLO", the I.A.F. attacked *Fatah* and D.F.L.P. headquarters in Beirut in a heavy half-hour air raid on July 17, 1981, following a *Katyusha* rocket attack on Nahariya¹⁴⁰⁰. The Lebanese government put the casualties at 300 dead and 800 wounded. Concurrently the Israeli's launched air strikes and naval artillery at more bridges and roads in southern Lebanon. This attack on the infrastructure caused serious petrol shortages since the main refineries were in the south¹⁴⁰¹ and fighting continued until a cease-fire was announced on July 24. The raid on Beirut was unanimously condemned by the Security Council in Resolution 490 of July 21, 1981.¹⁴⁰²

On 1 October 1985, Israeli fighter planes bombed the headquarters of the P.L.O. in Tunis¹⁴⁰³ in retaliation for the killing of three Israeli's on a yacht in Nicosia by the P.L.O.'s Force 17. According to Posner "the Israelis had managed to aim their bombs with pinpoint accuracy", demolishing P.L.O. offices at Arafat's seven-acre complex, located in the Haman Shatt suburb just twelve miles southeast of Tunis, "while leaving private Tunisian homes just a few feet away virtually untouched".¹⁴⁰⁴. The result was 75 killed, including 60 P.L.O., with 40-60 injured

1398 O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p162.

1399 O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p162.

1400 O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p163.

1401 O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p163.

1402 O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p165-6.

1403 Black I. and Morris B. *Israel's Secret Wars: The United History of the Israeli Intelligence*. (Hamish Hamilton. London. 1991.). p453.

1404 Posner S. *Israel Undercover: Secret Warfare and Hidden Diplomacy in the Middle East*. (Syracuse University Press. 1987). p213.

according to Israeli figures. Tunisian sources said the dead included a larger number of civilians¹⁴⁰⁵. Foreign Minister Yitzhak Shamir said at the time of the bombing that the Tunis raid was: "a warning that Israel will retaliate and fight against terrorist acts against its citizens"¹⁴⁰⁶. The attack was condemned by the Security Council Resolution 573.¹⁴⁰⁷

On 27 February 1988 a limpet mine in Limassol harbour disabled the ship *Al-Awda*. The PLO had just spent around \$750,000 to buy the old Greek car ferry¹⁴⁰⁸ the *Sol Phryne* so that it could take 131 Palestinian exiles, (whom Katz describes as former terrorists¹⁴⁰⁹) to the shores of Israel to dramatize their demand for a homeland. This was to be an Arab version of the *Exodus*, the freighter that brought over four thousand Jewish survivors of the Nazi concentration camps to British-ruled Palestine in 1947, only to be forced back to Europe by an embarrassed Britain, and it was for this reason that the ship was renamed it *Al-Awda*, the "Return"¹⁴¹⁰. The Palestinians "correctly blamed Israel"¹⁴¹¹, but all that Defence Minister Rabin would say was: "[t]he State of Israel decided it was compelled not to let them achieve their purpose, and we do that in whatever ways seem suitable"¹⁴¹².

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¹⁴⁰⁵ Black I. and Morris B. *Israel's Secret Wars: The United History of the Israeli Intelligence*. (Hamish Hamilton. London. 1991.). p454.

¹⁴⁰⁶ Posner cites *Jerusalem Post* International edition. 21 Feb. 1987. Posner S. *Israel Undercover: Secret Warfare and Hidden Diplomacy in the Middle East*. (Syracuse University Press. 1987). p214.

¹⁴⁰⁷ O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p166.

¹⁴⁰⁸ Melman Y. and Raviv D. *Every Spy a Prince*. (Houghton Mifflin. Boston. 1990.). p387.

¹⁴⁰⁹ Katz S.M. *Guards Without Frontiers: Israel's War Against Terrorism*. (Arms and Armour. London. 1990.). p63. Uses the phrase ex-HTA (Hostile Terrorist Activity) participants.

¹⁴¹⁰ Melman Y. and Raviv D. *Every Spy a Prince*. (Houghton Mifflin. Boston. 1990.). p387.

¹⁴¹¹ Melman Y. and Raviv D. *Every Spy a Prince*. (Houghton Mifflin. Boston. 1990.). p387.

¹⁴¹² Melman Y. and Raviv D. *Every Spy a Prince*. (Houghton Mifflin. Boston. 1990.). p391.

It is because most of the attacks noted in this section were apparently carried out against legitimate military targets, that they cannot be labelled as acts of terrorism in accordance with this author's definition. Again this relies upon an acceptance of Israel's views. As in the previous section the issue of the roles of the leadership of the P.L.O. comes up. This author's definition does allow for attacks on the leadership of the enemy organisation, but there is a question of whether the bases constituted legitimate targets in that people there were involved in the P.L.O. attacks or helped supply, train or arm them, for a line has to be drawn somewhere in terms of actions rather than mere membership or support, a view endorsed by O'Brien. The possible exceptions, therefore, to the general statement made here, that the attacks were carried out against legitimate military targets, are those carried out on the infrastructure of the Lebanon, the attack on *Al-Awda*, and those which occurred on the night of April 12-13, when Israel's Defence Minister Moshe Dayan appeared to call for countervalue attacks on locales from which PLO *fedayeen* operated¹⁴¹³.

In terms of the possible exceptions, the status of the infrastructure depends upon the context. For example if the intention of Israel was to stop the movements of P.L.O. forces on these particular roads then they would constitute legitimate targets (here it should be noted that consistency would require that similar purposive P.L.O. attacks on the infrastructure of Israel could not be labelled as acts of terrorism). If, however, the intention of such attacks was to get the Lebanese government to do something about the P.L.O. then they would constitute illegitimate targets as they performed no particular military function at the time of the attack. Due to the fact that the author has no real evidence to suggest the latter, the author's position is to go along with O'Brien's opinion that these were legitimate targets and to give the benefit of the doubt to Israel. As a result this author's label cannot be attached to these attacks.

As for the second possible exception, once again there is the issue of whether it constituted a legitimate target. This would depend on whether the Israeli's believed that the people who were to board it

¹⁴¹³ O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p156.

would be armed, or would resume their terrorist activities once they arrived in Israel. Only then would the *Al-Awda* constitute a legitimate target. However if this were to be the case then surely the Israeli's would have intercepted or destroyed the ship when it was full of these people at sea. The *Al-Awda* is therefore considered to be an illegitimate target. However before the attack on it can be considered to be an act of Israeli state terrorism a few more questions need to be answered. The first of which is whether Israel was responsible for it, for unlike the rest of the strikes against bases or property noted the forces carrying out the attack were not obviously Israeli. The importance of this issue is that my definition does require an open acknowledgement, but only to the extent that if the target audience does not know who carried out such an attack then it cannot receive any message that the terrorist is trying to send. It is of course possible for the terrorist to make its responsibility known to the audience whose behaviour he or she wants to modify, without it being made known to the wider world. This seems to be the situation in the attack on *Al-Awda* in that the Defence Minister Rabin declared: "The State of Israel decided it was compelled not to let them achieve their purpose, and we do that in whatever ways seem suitable"¹⁴¹⁴. The attack can therefore be seen as an act of state terrorism in that it was directed at an illegitimate target with the intention of deterring any other similar forays by Palestinian groups.

The third example also seems to qualify for this author's label as Dayan declared that Israel's objectives were "political, not military". Moreover he said:

"We made all the villagers aware that....it is their business to go to their government and tell them they have to take care no terrorists cross the border into Israel. That was the message"¹⁴¹⁵.

The next question to be answered is 'Do these attacks qualify as acts of terrorism in accordance with the other proposed definitions?'. The use of violence involved in all the attacks on the alleged terrorist bases

¹⁴¹⁴ Melman Y. and Raviv D. *Every Spy a Prince*. (Houghton Mifflin. Boston. 1990.). p391.

¹⁴¹⁵ Quoted in 29 U.N.SCOR (1766th mtg). p22 See *New York Times* "Dayan Says Raids Against Lebanon Will Be Continued" April 14, 1974. p1.col. 8; p3 col 3-6 cited by O'Brien W. *Law and Morality in Israel's War With the PLO*. (Routledge. London. 1991.). p157.

satisfies the demands of the P.T.A. definition that the use of violence was for political ends. In addition they all satisfy Stohl and Lopez's demand that the purposeful act of violence aimed to create fear or compliant behaviour in the victim. Usually the aim was to instil fear in other members of the Palestinian groups, but in the case of Dayan's statement it was the Lebanese villagers and government.

All of the killings noted above, with perhaps the exception of the attacks on Lebanon's infrastructure or the *Al-Awda*, qualify for the label of terrorism using the definition derived from Israel's P.T.O.. This is because they were all, "calculated to cause death or injury to a person".

With perhaps the exception of the attack on the *Al-Awda*, and the attacks on the villagers in April of 1973 these attacks do not not qualify under the U.S. definition because it requires that the premeditated, politically motivated violence be perpetrated by clandestine agents. As for these possible exceptions again it comes down to the issue of whether the U.S. would consider either a legitimate target and I would suggest not. Therefore these attacks would qualify for the label of terrorism in accordance with the U.S. definition.

With perhaps the exception of the attack on the Lebanese villagers in April of 1973 these attacks do not not qualify under Schmid and Jongman's definition mainly because it requires that the violence be perpetrated by clandestine agents. The clandestine attack on the *Al-Awda* could not qualify as their definition demands "human victims". The attack on the Lebanese villagers satisfies their demand and Dayan's words make it clear that the main purpose of the raid was to send a message to the Lebanese government and people. In this way only this act could be labelled as state terrorism using Schmid and Jongman's definition.

d) Other Military Strikes :

Although Arend and Beck claim that the only prominent military strike to be launched against a state purportedly linked to terrorist activity has been the 1986 raid by the United States¹⁴¹⁶, it is easy to see how particular actions of Israel can be included within this section. The first reason is that after I.D.F. commandos struck Beirut Airport on 28 December 1968, Israel was accused of state terrorism. During Operation "Tshura" (or 'Gift'), Israeli troops descended from six helicopters whilst two hovered above¹⁴¹⁷, and detained 1500 onlookers¹⁴¹⁸ in the terminal, whilst others proceeded to blow up 13 civilian planes¹⁴¹⁹, in retaliation for attack on an *El Al* passenger plane in Athens two days earlier in which an Israeli engineer was killed¹⁴²⁰. On 31 December the Security Council unanimously passed a resolution condemning Israel for its premeditated military action in violation of its obligations under the Charter¹⁴²¹.

Perhaps less obvious an example of counter-terrorist actions to include within this section is Israel's air strike upon Iraq's nuclear reactor near Baghdad in 1981, which itself had been preceded by the destruction of two cores for Iraq's Tammuz nuclear reactors which were awaiting

¹⁴¹⁶ Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.).p154.

¹⁴¹⁷ Falk R.A. 'The Beirut Raid and the International Law of Retaliation'. *American Journal of International Law*. Vol. 63. 1969. pp415-443. p415.

¹⁴¹⁸ Posner S. *Israel Undercover: Secret Warfare and Hidden Diplomacy in the Middle East*. (Syracuse University Press. 1987.).p238.

¹⁴¹⁹ Katz S.M. *Guards Without Frontiers:Israels War Against Terrorism*. (Arms and Armour. London. 1990).p38. Katz noted the name of the operation. Melman Y. and Raviv D. *Every Spy a Prince*. (Houghton Mifflin. Boston. 1990.).p180. Posner puts the figure of aeroplanes hit at 14. Posner S. *Israel Undercover: Secret Warfare and Hidden Diplomacy in the Middle East*. (Syracuse University Press. 1987.).p238., as do Black and Morris, but interestingly they say that the original aim was just three or four. Black I. and Morris B. *Israel's Secret Wars: The United History of the Israeli Intelligence*. (Hamish Hamilton. London. 1991.).p264.

¹⁴²⁰ Falk R.A. 'The Beirut Raid and the International Law of Retaliation'. *American Journal of International Law*. Vol. 63. 1969. pp415-443. p416. Also Black and Morris in contrast says it was a response to the killing of an *El Al* engineer by the P.F.L.P. in Athens two days earlier. Black I. and Morris B. *Israel's Secret Wars: The United History of the Israeli Intelligence*. (Hamish Hamilton. London. 1991.).p264. In contrast Katz says it was in response to the hijacking of *El Al* airliner to Algiers. Katz S.M. *Guards Without Frontiers:Israels War Against Terrorism*. (Arms and Armour. London. 1990).p38.

¹⁴²¹ Falk R.A. 'The Beirut Raid and the International Law of Retaliation'. *American Journal of International Law*. Vol. 63. 1969. pp415-443.p417.

shipment from *La Seyne sur Mer* in France which the French blamed on Mossad¹⁴²². Whilst the inclusion of both on the basis that Israel wanted to prevent this Arab state (and others¹⁴²³) from developing an offensive nuclear capability could be criticised on the grounds that nuclear weapons are not normally labelled as terrorism, good denotative grounds can and have been made for such a claim¹⁴²⁴ because Israel declared they would have been used against Israel and its population centres¹⁴²⁵. In addition Israel's attack on the reactor has been described as an act of state terrorism by a leading academic in the field¹⁴²⁶.

¹⁴²² Melman Y. and Raviv D. *Every Spy a Prince*. (Houghton Mifflin. Boston. 1990.).p253.

¹⁴²³ Begin cited by Melman Y. and Raviv D. *Every Spy a Prince*. (Houghton Mifflin. Boston. 1990.).p251 "The prime minister, as a result, established a new doctrine: Israel would not permit any Arab state to develop an offensive nuclear capability".

¹⁴²⁴ Stohl M. 'International Dimensions of State Terrorism' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Connecticut. 1984.). pp43-58. p48.

¹⁴²⁵ 'Israeli and Iraqi statements on Raid on Nuclear Plant' reprinted in Shieler, 'Israeli jets Destroy Iraqi Atomic Reactor; Attack condemned by US and Arab Nations' *N.Y.Times*, June 9, 1981. col. 6. cited by Arend A.C. and Beck R.J. *International Law and the Use of Force: Beyond the UN Charter Paradigm*. (Routledge. London. 1993.).p71.

¹⁴²⁶ Stohl labelled Israel's destruction of the Iraqi nuclear reactor in 1981 as an act of state terrorism, on the basis that "The bombing raid had.... a wider audience than the immediate victim of the raid". That is, it sent a message to both the Iraqis and other Arab neighbours about Israel's position on the development of nuclear capability. Stohl M. 'International Dimensions of State Terrorism' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Connecticut. 1984.). pp43-58. p45.

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Like the assessment of killings by Israel, the attack on the nuclear reactors at *La Seyne sur Mer* in France is problematic in so far the action was not acknowledged by the perpetrators. This author's definition does requires this open acknowledgement, but only to the extent that if the target audience does not know who carried out such an attack then it cannot receive any message that the terrorist is trying to send. It is of course possible for the terrorist to make its responsibility known to those whose behaviour he or she would like to modify, without it being made known to the wider world. This author does not know whether this was the case in the attack on the nuclear reactors at *La Seyne sur Mer*. Israel's responsibility was however obvious in the case of the attack on Beirut airport and the Iraqi reactor in 1981.

The issue then is were these attacks carried out on legitimate targets?. This author will accept that the nuclear reactors are dual purpose and therefore are legitimate targets. This of course would make Israel's nuclear reactor in the Negev desert a legitimate target. As for the civilian airliners these are not legitimate targets. So whilst the attacks on the various nuclear targets could not constitute acts of terrorism for they were launched against legitimate targets, the attack on the civilian airliners at Beirut airport constitutes an act of state terrorism because of this and the fact the politically motivated Israelis were attempting to send a message to the Lebanese government to stop allowing the P.F.L.P. to organise in its own territory.

Do these attacks qualify as acts of terrorism in accordance with the other proposed definitions?. The nature of the target does not affect either that of Stohl and Lopez or that derived from the U.K.'s Prevention of Terrorism Act. The use of violence involved in hitting the nuclear reactor and cores satisfies the P.T.A.'s demand that the use of violence is for political ends. As for Stohl and Lopez's definition, Stohl himself described Israel's attack on the reactor as an act of state terrorism¹⁴²⁷,

¹⁴²⁷ Stohl labelled Israel's destruction of the Iraqi nuclear reactor in 1981 as an act of state terrorism, on the basis that "The bombing raid had.... a wider audience than the immediate victim of the raid" it sent a message to both the Iraqis and other Arab

in a chapter in which he clearly wrote that by terrorism he meant: "[t]he purposeful act or threat of violence to create fear and/or compliant behaviour in a victim and/or audience of the act or threat"¹⁴²⁸. The use of violence involved in blowing up such property satisfies Stohl and Lopez's demand that the purposeful act of violence aimed to create fear or compliant behaviour in the victim and /or target audience, on this occasion the Iraqi leadership and other Arab nations contemplating such actions

The attack on the nuclear cores and that on Beirut airport cannot be labelled terrorism in accordance with Israel's P.T.O. as they were not "calculated to cause death or injury to a person or to threats of such acts of violence" because they were carried out against property. More debatable is whether the attack on the Iraqi nuclear reactor fits as it included the people building it. However these could be considered collateral damage and therefore this does not qualify under the Israeli definition.

The U.S. definition first of all requires that the premeditated, politically motivated violence be perpetrated against non-combatant targets, and that a message is (sometimes) sent, all of which are fulfilled by the attack on civilian aircraft at Beirut airport. Unfortunately the Israelis carried out the operation overtly and it therefore does not meet the criteria of being carried out clandestine agents. The attack on the nuclear cores at *La Seyne sur Mer* was carried out by covert operators but this do not qualify as an act of terrorism in accordance with the U.S. definition because the nuclear cores are here considered to be legitimate targets.

The attack on Beirut airport could not fulfil the qualifying criteria demanded by Schmid and Jongman's definition because it was carried out overtly, unlike the attack on the nuclear cores in France. The author is ignorant of whether the attack on the Iraqi reactor was

neighbours about Israel's position on the development of nuclear capability. Stohl M. 'International Dimensions of State Terrorism' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Connecticut. 1984.). pp43-58. p45.

¹⁴²⁸ Stohl M. 'International Dimensions of State Terrorism' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport, Connecticut. 1984.). pp43-58. p43.

carried out by unmarked planes. The attack on the nuclear core could not qualify because it did not involve an attack on "human victims" as required by Schmid and Jongman's definition, whilst if any were killed in the attack on the nuclear reactor (and they were not considered as collateral damage) the attack would still not qualify as it was very difficult to say that the main target of the attack were the Arab governments rather than the reactor itself.

Conclusion.

"A consideration of state terrorism allows us to examine the problem [of insurgency terrorism] from a different and rather less familiar perspective. In doing so we will see more clearly some of the considerations inherent in the term. We will also, and more importantly, develop a more sophisticated notion of the nature of terrorism. By 'peeling' away the complications arising out of our everyday view of terrorism as the activity of a secret or underground society, we can better come to look at terrorism as a process, and attempt to identify the particular kind of acts that characterise it".

M. Taylor.¹⁴²⁹

As noted within the introductory chapter the aim of this thesis was to investigate the concept of state terrorism, and in doing so it hoped to raise, if not answer, several important questions and issues surrounding the *production* of any definition of terrorism (including state terrorism). It was also believed that by rigorously applying this author's definition (and various others) to a generally unknown quantity, the thesis would highlight the advantages and disadvantages of each (and the parts thereof), as well as the problems of *applying* any definition of terrorism. Thirdly, the thesis aimed to further the cause of knowledge by accurately describing the legalities of various aspects of Israel's counter-terrorist policies since the day troops were sent into the West Bank in 1967.

Starting with the last of the three aims, there seems little doubt that the section has provided a unique legal description of particular counter-terrorist policies followed by Israel in the West Bank and Israel over the period 1967-1994, and a detailed history of Israeli counter-terrorist actions abroad. Indeed most of the legal descriptions (at least in English) of the policies appear to deal only with one or two of types of action in

¹⁴²⁹ Taylor M. *The Terrorist*. (Brassey's Defence Publishers. London. 1988.). p40.

either Israel or the West Bank and not over such a long period of time. It also appears that the Ph.D. has also achieved much of the main aim, in that the examination of the notion of state terrorism from a number of approaches, not only resulted in a working definition of the concept, but it also led the author to disregard various alternative approaches to the notion of state terrorism and terrorism, and moreover to suggest elements that must be included in any useful definition of terrorism.

In regards to the former this included the rejection of the legalistic approach because of the inconsistencies inherent in existing international law, and a rejection of labelling any act of terrorism in accordance with the political ends sought. As for things that must be included within a definition of terrorism, it is suggested that the element of physical force or violence must be present in terms of an act or threat of such. If it is to be of any use to the political analyst the element of 'politics' must be included to distinguish such violence from that used by criminals and crazies, to use Hacker's terms. Thirdly, it is useful to distinguish organised or planned acts of political violence from essentially similar purposive violence carried out spontaneously during everyday life, riots or inter-communal violence by individuals or 'groups' which are temporary in nature. This author did this by insisting on the presence of an organisation. Then, if terrorism is to be used as a pejorative term one must make a distinction as to its victims by the inclusion of some term be it civilian, non-combatant or innocent. This is often overlooked by scholars but without its inclusion it is impossible to make a distinction between 'legitimate' and 'illegitimate' acts of political violence except by reference to the political ends sought, rather than the means. Without this it is also very difficult to distinguish acts of terrorism from essentially similar acts of politically motivated violence that go by the name of war. This said, the concept of legitimate targets is the soft underbelly' of any definition of terrorism, as many belligerents widen the notion by making reference to the ends sought rather than the role of the individual in aiding the enemy's military forces. However the problem of defining (il)legitimate targets in relation to producing a definition of terrorism also affects the production of a definition of 'war' as a term used to describe acceptable acts of political violence. Thus to ditch the use of the 'terrorism' on these grounds, is to ditch the use of the term 'war' to denote an acceptable means of fighting political conflicts. Finally unless one

simply wants to term all acts of political violence which target legitimate victims as 'war' and all those which hit illegitimate targets as war crimes, then a way must be found of distinguishing terrorism (which is essentially a war crime) from the rest of the war crimes which target illegitimate victims. The method suggested is by introducing the idea of 'victim-audience' differentiation. That is generally speaking terrorism unlike massacres or genocide involves the killing of innocents in order to modify the behaviour of an audience larger than the immediate victims. Of most importance perhaps, is the conclusion that when attempting to define the term terrorism (or other types of political violence) it is necessary to think of it in relation to forms of political violence.

As for the second aim of the thesis, the application of the various working definitions to the counter-terrorist activities of Israel between 1967 and 1994 revealed a number of problems pertaining to each definition. Undoubtedly the easiest of the six to apply was that contained within the U.K.'s Prevention of Terrorism Act, this was because all it required was that the act of violence in question was politically motivated. Unfortunately this meant that it was a rather blunt instrument which labelled all of the counter-terrorist activities under consideration both at home and abroad, as acts of terrorism. In this way it can be seen as essentially a 'pacifists' definition which labelled all acts of (political) violence as equally reprehensible. It would also mean that other labels such as 'war' 'war crimes' or 'genocide' would become meaningless.

Almost as easy to apply, and almost as indiscriminate a tool for the political analyst, was the definition derived from Israel's Prevention of Terrorism Ordinance. This was because it required that the threats or "acts of violence" (and not necessarily political violence) were calculated to cause injury or death or injury to a person, rather than to property. As such it was far too inclusive, with only the acts of demolition from the chapter dealing with counter-terrorist acts at home escaping its application. Whilst in terms of Israel's actions abroad, the only actions not to be labelled as terrorism were those attacks on the infrastructure in Lebanon, the Iraqi nuclear plant and equipment, and the mining of the *Al-Awda* .

Stohl and Lopez's definition was also far too embracing it that it required that the aim of the threat or act of violence was to create fear or compliant behaviour in a target be it the victim or audience. As far as the political analyst is concerned, in terms of assessing the actions of a state within the areas it administers, their definition is slightly more discerning than the U.K.'s definition, in that it could distinguish terrorism from murder or genocide for example, but little else. Indeed almost all of the counter-terrorist activities to which it was applied both at home and abroad, constituted acts of terrorism under Stohl and Lopez's definition, as would any other law or act of war. The only exception were certain types of fatal shootings where the aim was simply to kill.

Of the three definitions derived from existing legislation that contained in Title 22 of the United States Code, Section 265f(d), and used by the Office of the Co-ordinator for Counterterrorism in the production of the US Department of State's 'Patterns of Global Terrorism', was the most discriminating. However it could be argued that it was too discriminating it that most of the activities under review failed to constitute acts of (state) terrorism in that they were carried out by overt forces of the State. This tradition of labelling terrorism in accordance with the nature of the perpetrators 'dress sense' is quite a popular one within the literature on terrorism. In terms of labelling the actions of the State it is at its most appealing in regards to the actions of a state abroad, for it creates a level playing field in terms of warfare, albeit one that in practice favours the norms of established powers who wrote the rules of warfare.¹⁴³⁰ Whilst in terms of the violent actions of the State carried out within its area of jurisdiction, it is more attractive than the other pieces of legislation in that it seems to cover the illegal activities of the State, which then introduces covert actors such as 'death squads' to carry out its work. It may even be possible to say that it covers some of the legal actions of the State, notably those carried out by its secret police, as the application to the activities of *Shin Bet* revealed.

¹⁴³⁰ for Fotion and Elfstrom the deception inherent in fighting without a uniform is not in itself immoral, it is only deception relative to the standards established by establishment powers. For them: "[t]he moral problems covering the use of organised destructive force will remain the same whether employed by military or neo-military organisations" Fotion N. and Elfstrom G. *Military Ethics: Guidelines for Peace and War*. (Routledge, Kegan and Paul. London. 1986.). p213.

Its disadvantage is that it fails to address the uses of violence by the State when it introduces legislation which makes it impossible for the victim to be 'not guilty' and to escape its violence. Thus it would not for example label the classical administrative act of sending political dissidents to Siberia (or in this case Jordan or Lebanon) as a act of state terrorism, as the treatment of deportation and administrative detention revealed. Nor would it ever label the State's shooting of demonstrators by overt members of the State's security forces - be they police or soldiers - as state terrorism. The application of the U.S. definition to the section on shootings (and arrests) also showed the limitations of terms like 'premeditated' as a means of distinguishing terrorism from other forms of political violence. The latter application also showed the problem of using the term non-combatant in regards to the State's use of violence at home. Overall the limitations of the definitions derived from national counter-terrorist legislation is unsurprising given the fact they were produced for a specific purpose by politicians.

Schmid and Jongman's definition also suffers from the problem of requiring the perpetrators of terrorist acts to be clandestine, although they loosen (if not end) this requirement by making it semi-clandestine (whatever that is). Like that of Stohl and Lopez, the U.S. State Department and Israel, Schmid and Jongman's definition does not require the violence to be politically motivated. So whilst that did not affect the application which was to politically motivated acts of violence, their comprehensive definition could be criticised for being too inclusive in that one would have to label criminal gangs as terrorists along with insurgent groups and the State. Finally because it requires that the victims be "human", their definition excludes attacks upon property.

As for this author's definition, it is more precise than his 1991 version which required:

"the deliberate threat or use of violence for political purposes by either non state actors or the state abroad, when such actions are intended to influence the victim(s) and/or target(s) wider than the immediate victim(s); or the use of such purposive violence by the state within its own borders when such actions either

fail to allow the victim prior knowledge of the law and/or distinguish between the innocence and the guilt of the individual victim"¹⁴³¹

in that it gives more examples. (In this sense from a purely personal point of view this is both pleasing in that it suggests I was working on the right lines when producing it, but it is still a little disappointing in that I did actually believe the literature and questionnaire would produce far more drastic alterations to my definition).

In terms of applying this author's latest definition, the biggest problem is the fact that a great deal more work has to be done in explaining the legal-constitutional background for each act and the legalities pertaining to each, in absolute terms, but especially in relation to the requirements of each of the other definitions tested. However once done it is far more subtle means of differentiating between the various counter-terrorist policies acts than any of the other definitions with perhaps the exception of Schmid and Jongman's (although it is of course far easier for this author to apply his model than any of the others in that he does not know exactly what they meant by each of its constituent parts).

However despite this and the relatively favourable response¹⁴³² to an easier version of it by academics in the field¹⁴³³, at the end of the

¹⁴³¹ Sproat P.A. 'Can The State Be Terrorist?' *Terrorism: An International Journal*. Vol. 14.(1). Jan-Mar 1991. pp19-29. p25.

¹⁴³² For the earlier version see Appendix A. This fares well in comparison to the 33% (19) of 58 respondents who stated that they found Schmid's definition of terrorism acceptable. Although here it should be pointed out that in all 81% of the respondents found Schmid's definition partially or fully acceptable, for in addition to a straightforward 'yes or no' answer to the question "Do you find the above definition acceptable", Schmid and Jongman had included the option of the answer "Not entirely". Alternatively "Almost two-thirds of the respondents could not, or not entirely agree with this definition" Schmid A.P. and Jongman A.J. *Political Terrorism: A New Guide to actors, Authors, Concepts, DataBases, Theories and Literature* (SWIDOC. Amsterdam. 1988).p2-3. Perhaps the comparison is unfair in that this author excluded those who did not reply from the percentages unlike Schmid and Jongman. In this way the results would be 40% (Or 48/120) replied 'Yes' , or 42% (51/120) replied 'No' and 17.5% (21) did not answer.

¹⁴³³ In reply to question 12 which asked "Do you find the following 'universal' definition of terrorism acceptable?", 52% of those 99 answers indicated "No", the other 48% stated "Yes". The definition was, terrorism is: "the deliberate threat or use of violence for political purposes by either non-state actors anywhere or the state outside its area of jurisdiction when such actions are intended to influence a target(s) wider than the immediate non-combatant victim(s); or the use of such purposive violence by the state (when it claims) the authority when its actions are either illegal

process, the author is not totally convinced that one should actually use it. This surprising conclusion is not so much a criticism of his own definition, for it still appears to be the best definition of (state) terrorism, in that its problems seem less than the others as chapter 5 revealed. (There are of course some problems in addition to the 'emotional' one which relates to the difference between those actions he believes it should cover, from what it actually does label as terrorism).

The reluctance to recommend the use of his own comprehensive definition of political terrorism is a result of greater scepticism about the field of terrorism studies since starting the reading for the thesis. This itself is a result of the fact that in practice the issue of definition of the word terrorism, even when relating to the sub-state variety, is not taken anywhere near as seriously as it should be in the field of terrorism studies. This inadequate treatment of the words used to describe political violence by the field of terrorism studies is of course not the only area of 'political science' which has an inadequate lexicon, although academia is far less 'guilty' of sloppy thinking than those in the media and formal political debate. However as a whole 'academics' in the field of terrorism studies act in a way which gives great credence to Herman and G. O'Sullivan's description of their role in the service of powerful vested interests in their book *The Terrorism Industry: The Experts and Institutions that Shape our View of Terrorism*.¹⁴³⁴ This is because in practice the most common uses of the term 'terrorism' appears to be three-fold. The first is its use as a political device by which to condemn the political violence of those one does not like. Much, if not most of the time, this means no definition, although sometimes one is produced to suit one's purpose (interestingly these are the two approaches taken by politicians in legislating against terrorism). The second, is its use as a rather blunt instrument by which to label all acts of insurgent violence (although in practice it usually means labelling the actions of those one does not like in this manner).

or legal but fail to allow the individual victim the opportunity to avoid such violence through the secret, vague or indiscriminate nature of the enabling legislation".

¹⁴³⁴ Here they constitute sometimes willingly, sometimes unwittingly, an aspect of the 'terroroism industry', a cultural industry which manufactures, refines and packages for distribution, information, analysis and opinions in a topic called 'terrorism' in the interests of certian Western groups and states.Herman E.S. and O'Sullivan G. *The Terrorism Industry: The Experts and Institutions that Shape our View of Terrorism*. (Pantheon. New York.1989.) generally.

Only occasionally is the term terrorism used to denote a special form of violence in which the real target (or audience) is not those immediate 'innocent' victims, and in this way terrorism could be seen as a particular form of illegitimate violence related to, if not a subset of, war crimes which also target innocents. It was on this level that this author's working definition was based.

It is because of the infrequency by which the term is used by academics in this way, coupled with their general reluctance in practice (as opposed in theory), to try and apply their definition of terrorism to the actions of the State, that this author is strongly tempted to recommend ditching the use of any definition of 'terrorism' (including his own). A view taken by other authors including R. White¹⁴³⁵.

So rather than taking a great deal of time over why or how this author's definition may be improved, questions that would surround the 'innocent' nature of the victim, and the exact relationship of the victim and the target, the issue becomes one of is there any point in attempting to save it, for to do so would only legitimise the continued use the term (sub-state) terrorism.

The main reason then for not recommending people to ditch his own definition along with all others, is the realisation that academia (and other vested interests) will continue to use the term. The author therefore recommends the use of his definition and especially its production process to other authors in the field. For if nothing else it may convince others to think about what they are writing about more carefully, or even to produce a better definition. Another reason not to ditch the idea of state terrorism altogether (although it may mean ditching this author's definition) is that a credible case can be made out for the production of a word which means acts of state violence which do not fit the requirements the rule of law. This was not the approach of this author, for he attempted to see if the State could perpetrate acts which were essentially the same as those committed by sub-state groups. Nevertheless a case could be made for producing a word to mean illegitimate State actions and that this word should be 'state terrorism'.

¹⁴³⁵ In reply to question 12 R. White wrote "There should be no use of the term. "Terror" and "terrorism" are too controversial. Why not just use "state violence" and "insurgent violence"?".

This is based upon the idea that the term terrorism is often used to refer to a great range of actions of insurgents of which the author disapproves. The existing terms such as human rights abuses, violations of international law, the laws of war, are all a bit too precise, whilst repression or oppression do not convey the fear that some of these arbitrary acts of State instil.

As for the problems surrounding the application of any definition, along with consistency, and that of defining each element, for example 'innocent', the main one is that of intent and proving who the real target audience was. This problem affects all definitions of terrorism and was highlighted particularly well by the application of Schmid and Jongman's definition, which insisted that the audience be the main target.

Finally then, it is worth recalling Raphael's comments "that the results of a conceptual inquiry sometimes seem disappointingly meagre". For him:

"The clarification of concepts is like cleaning the house. When you have cleaned the house, there is not much to be seen for your work. You have not acquired any new possessions, though you will have thrown out some things that are not wanted and are just a nuisance. What you will have at the end of it is a tidier house, in which you can move around more easily and in which you can find things when you need them." 1436

Using this analogy it is possible to see terrorism an ornament which no one has ever seen as a whole. Like an archaeologist this housekeeper has created an multi-coloured object out of the many fragments that were lying around in the untidy house that is the lexicon of politics. At present he procrastinates over whether to throw the ornament out, after spending several years putting it together. A view which is encouraged by the fact that most other housekeepers believe it could not be multi-coloured or take such a shape, because they have written or read about only one particular (political) colour, and one dimension.

¹⁴³⁶ Raphael D.D. *Problems of Political Philosophy* (2nd.ed. Macmillan Basingstoke.1990.). p20. He goes on to say, "The analogy is apt in another respect also. Cleaning the house is not a job that can be done once and for all. You have to do it every week" p20.

Moreover this housekeeper thinks it may merely distract us from seeing, polishing and repairing the more valuable objects in the house. However the housekeeper also knows despite the fact that the ornament itself may appear in Raphael's words "disappointingly meagre", the processes involved in doing this particular household chore was useful, in that he has learnt many things about the variety of materials he came across and new skills have been developed. Moreover others (including those who believe that terrorism is a one dimensional, red object) may learn from reading about it¹⁴³⁷.

¹⁴³⁷ The housekeeper's dilemma can be seen to be supported by the concluding words of a student who had written an (American) thesis on the topic "it is often easier to identify that which is not terrorism than to attempt to label exactly that which is" Hoffman R.P. *Terrorism A Universal Definition* (Claremont Graduate School. Ph.D. 1984). p197.

Appendix A.

The Questionnaire.

It was because this author's reading of the literature on the topic of 'terrorism' continued to contribute so little of value to the debate on the nature of the concept of state terrorism, that a pointed questionnaire was designed and sent to various academics. The authors to who the questionnaire was sent were taken from a number of sources. One group of authors consisted of those who had written in *Terrorism: An International Journal* from the first edition in 1978 until the end of 1993. Initially the starting and finishing dates had been determined by the nature of the *BIDS*¹⁴³⁸ computerised database which had been used to retrieve such information. Unfortunately it goes back only as far as 1981 and did not include articles published in the same journal following its change in title to *Terrorism and Conflict Studies*. The parameters of this initial group were extended in both directions following the decision to try to publish the results as an article in itself.

The second group of authors was also taken a leading journal in the field, *Terrorism and Political Violence* . Initially the names were taken from a hand made list of articles which had appeared from its first edition in 1987 until 1991, but this finishing date was also expanded to include all editions up to the end of 1993.

The third and fourth group consisted of authors who had specifically written on the topic of state terrorism. The first of these was produced by requesting 'hits' in both the social science citations index and arts and humanities of the *BIDS* database, using the 'keywords/words in a title' facility which was available only after 1991. This produced all articles with any of the following terms in the title to be retrieved. That is, 'state terror', 'state terrorist', 'state terrorism'; 'regime terror'; 'regime terrorist', 'regime terrorism', 'government terror', 'government terrorist', 'government terrorism', 'governmental terror', 'governmental terrorist', 'governmental terrorism', 'terror from above', 'terrorism from above', 'terror by public authority', 'terrorism by

¹⁴³⁸ Bath Information and Data Services (BIDS).

public authority', 'institutional terror', 'institutional terrorism', 'institutional terrorist', 'government repression', 'governmental repression' and 'state repression'¹⁴³⁹. The final group consisted of both authors who had written books with the words 'state' and one of the following - 'terror', 'terrorism', 'terrorist' in the title gathered from both UK and US books in print on the 26 January 1993 and 28 January 1993 respectively, and/or who had written chapters within these books.

This sample taken from all four sources was then scaled down to a viable size by the use of a number of filters. The first was that the journal reference had to have been recorded as an 'article' as opposed to an 'editorial', 'discussion', 'interview' or 'note'. A qualification which was primarily imposed for qualitative reasons. The second was that the articles had to be written in English. This was introduced primarily as a means of keeping the response rate high following the retrieval of a significant number of articles in French on the revolutionary 'reign of terror' which occurred in France in 1789. A similar motive lay behind the third filter which demanded that each author of such an article had to have an 'academic' address¹⁴⁴⁰. The presumption being that such authors would be more sympathetic to a questionnaire from a Ph.D. student than those who worked for or within governments, their agencies or private firms would be. The fourth filter was that authors who were known to be students were to be excluded because it was felt that many such authors would have changed universities. This enabled the exclusion of this author whose article 'Can the State be Terrorist?' which had been published in *Terrorism : An International Journal* in 1991 had otherwise fulfilled all the previous qualifying criteria ¹⁴⁴¹.

Following the testing of a pilot version, the questionnaires were sent out in batches throughout the period November 1993-May 1995, with a

¹⁴³⁹ Via the use of an asterisk which enabled a search for a word with a number of possible word endings. i.e. the word 'terror*' would produce 'hits' for both terror, terrorist, terrorists, terrorism, likewise 'government*' could produce government, governments, or governmental.

¹⁴⁴⁰ Whenever a problem arose over the addresses (especially the computer generated ones) they were produced in accordance with either and /or the 19th edition of the *World List of Universities* (International Association of University, Stockton Press, NY, 1992), *Faculty White Pages 1991* (Gale Research Inc. Detroit 1991) and 14th edition of *American University and College* (American Council in Education. Walter de Gruyter. NY, 1992).

¹⁴⁴¹ My article 'Can the State be Terrorist?' *Terrorism : An International Journal* . Vol. 14(1). 1991. pp19-29 qualified within the first of the four sources.

second questionnaire being sent to those who did not reply to the first request. At the end of this process, the author had received 120 responses to the 247 questionnaires. In addition to 4 replies whose names could not be traced or which specifically requested the anonymity which this author had offered, the other 116 respondents to the questionnaire according to their replies or original addresses were:

J.Adelman, M.Anderson, N.Ben-Yehuda, G.Bowen, C.Brockett, H.Brosius, P.L.Buchanan, D.Carmichael, J.Cauley, M.H. Chang, N.Chomsky, R.L.Clutterbuck, R.Cohen-Almagor, R.R.Corrado, R.Crelinsten, M.Crenshaw, Y.Dinstein, R.L.Dowling, R.Drake, W.Enders, W.L.Eubank, R.S.Ezekiel, R.F Farnen, E.Fattah, J.E.Finn, L.S.Frazier, A.Geifman, A.George, T.Goertzel, F.Gregory, A.Guelke, J.Hart, W.A.Hazelton, E.S.Herman, C.Hewitt, F.Homer, R.E.Howard, M.Hughes, R.Israeli, K.Jeffrey, C.W.Kegley, G.Kieh, B.Kiernan, R.P.B.Laan-Bouma, T.Lewellen, M.Lippman, F.Lopez-Alves, R.R.Ludwikowski, L.J.Macfarlane, L.J.Martin, K.D.Mathur, W.Maley, J.McCamant, C.McCauley, M.Mozaffari, R.R.Miller, M.J.Murray, M.Nisan, K.L.Oots, J.J.Paust, J.Petras, D.Pion-Berlin, D.Pluchinsky, R.M.Pockrass, J.M.Post, D.Premo, G.H.Quester, J.M.Rabbie, A.Roberts, K.G.Robertson, B.Rolston, J.I.Ross, A.P.Rubin, S.Ryan, S.E.Salmony, M.Salwen, B.Saper, J.Scarpaci, B.A.Scharlau, F.Schiff, D.E.Schmitt, A.P.Schmid, D.Scott-Palmer, S.K.Shernock, P.Sigmund, S.Sloan, J.Smith, J.Smyth, R.Solo, J.W.Soule, E.Sprinzak, H.W.Stephens, M.Stohl, D.Tal, M.Taylor, H.Tittmar, K.Toloyan, E.Tompkins, M.Tugwell, C.Vanderpool, C.A.Watson, C.A.Wege, G.Weimann, L.Weinberg, S.L.Wiener, R.F.Weisfelder, F.Wheeler, R.White, T.White, P.Wilkinson, J.W.Williams, S.Woy-Hazelton, J.Wright, C.H.Yaeger, A.Yoder, J.Zuliaka.

The Quantitative Answers.

In response to question 1, which asked 'Can acts, carried out directly by the agents of those in power, ever be labelled acts of 'terror' or 'terrorism'?', 3% answered with an outright "No", an overwhelming 86% of those 118 respondents indicated "Yes, either as acts of 'terror' or 'terrorism'", 7% replied "Yes, but only as acts of 'terror'", a figure which was only one percent more than the percentage of respondents

who answered "Yes but only as acts of terrorism"¹⁴⁴². Here it should be noted that the total sum of all the percentages made in answer to each individual question may not necessarily equal one hundred. This is because all of the figures have been rounded up or down to the nearest percentage, with the exception of those half percentages which are left the same.

Question 2 was concerned with the use of labels. It specifically asked 'What words would you use to label acts of direct 'terror/ism ? (excluding support/sponsorship of insurgents) e.g. 'state terror', 'regime terrorism', 'terror from above', 'governmental terrorism', 'repression' etc.?' . Over 60 answers were received of which this author would describe 26 as credible 'labels'.¹⁴⁴³

Of these credible labels the most popular was that of 'state terror' chosen by 49 authors, a fact that could at first glance be seen to give weight to those who like Provizer and Quester believe that it is not profitable to collapse these two distinct phenomena into a single category. Yet this finding must be tempered by two things. Firstly only 8%(4) of the 49 authors who accepted the label 'state terror' had answered 'Yes, terror only' in response to question 1, 'Can acts, carried out directly by the agents of those in power, ever be labelled acts of 'terror' or 'terrorism'?. Ninety percent(44) of those who had accepted the label state terror had already ticked the box marked 'Yes, either as acts of 'terror' or 'terrorism'¹⁴⁴⁴. Secondly the question was 'biased' in favour of use of the term, in that 'state terror' was cited as an example of a label that one might use along with four others. The reasoning being that some respondents to the pilot questionnaire had not understood the meaning of the word 'label' when the question not included examples. Support for

¹⁴⁴² Eight ticked the box entitled "Yes, but only as acts of 'terror'. Three of the replies to question 1 were 'no', 101 indicated "Yes, either as acts of 'terror' or 'terrorism', 6 indicated that it was acceptable to label 'acts carried out directly by the agents of those in power' 'only as acts of 'terrorism'. Two of the 120 were left blank.

¹⁴⁴³ Obviously the term credible is rather subjective, examples of those labels excluded include: assassination, torture, genocide, hijacking, state violence, official covert warfare, abuse of power, state coercive powers, terrorism from below, war crimes, human rights violations, police state, military despotism, vigilantes, paramilitary, reprisals, bad. This latter one may have been a reference to my question.

¹⁴⁴⁴ The remaining respondent who constituted the other 2% indicated that he would only accept the use of the term 'state terror' in reference to the external actions of the state.

the claim that the inclusion of the examples may have influenced the outcome is that a number of authors answered the question by either referring to "all of the above" or simply underlining some or all of the given examples.

Given this inherent bias it was not surprising that two of these other four labels were joint second in these rankings. The labels 'governmental terrorism' and 'repression' were cited by 27 authors along with the label 'state terrorism' which had not been given as an example. The other two of the five examples 'regime terrorism' and 'terror from above' came in fifth and sixth in these rankings with 26 and 18 citings respectively. As for the rest of the 26 credible labels identified by this authors questionnaire, these were 'terrorism' (4 citations), 'political terrorism'(2), and the rest ('terror', 'governmental strategies of terrorism', 'elite strategies of terrorism', 'state based terrorism', 'regime of terror', 'government terrorism', 'governmental terror', 'government terror', 'oppression', 'state repression', 'government repression', 'elite repression' 'political governmental terrorism', 'legal terrorism', 'legitimised terrorism', legitimised terror', 'institutionalised terror', 'official terrorism') were cited only once.¹⁴⁴⁵

Of the 119 responses to the question 3, 'Do you think that it is helpful or a hindrance to study such acts alongside terror/ist acts carried out by insurgent groups?' (which includes three answers given by one respondent) only 10% claimed that it was a hindrance to study such acts alongside terror/ist acts carried out by insurgent groups, with an overwhelming 66% saying that it was helpful. The remaining 24% of the responses were split between those who replied "neither" or "both". If this latter group is removed so that the figures are solely those who expressed a preference one way or another, the percentage of those who believe that it is helpful or a hindrance to study the two phenomena together rise to 87% and 13% respectively¹⁴⁴⁶.

¹⁴⁴⁵ Examples of the less credible definitions also cited by one author unless otherwise stated include: 'reprisals', 'counter-terrorism reprisals' 'state sanctioned terrorism'(2), 'state directed international terrorism', 'military despotism', 'totalitarianism', 'death squads', 'human rights violations', 'war crimes'. This is not all the answers given, there are other answers including sentences which are even less credible as labels.

¹⁴⁴⁶ To question 3, 78 replies indicated that it was helpful to study 'terror/ist' acts carried out by agents of those in power alongside 'terror/ist' acts carried out by insurgent groups, 12 indicated that it was a hindrance, 9 indicated that it was neither a

Question 4 asked "Have you ever written on the topic of direct 'terror/ism' by those in power?" to which 115 authors replied. Of these 63% answered "Yes", with a corresponding 37% saying "No"¹⁴⁴⁷. It also allowed space for those who replied "Yes" to note the definition that they had used. However of the large number who wrote in this space only 30 or so¹⁴⁴⁸ of these answers could reasonably be said to contain a definition, and many of these left a lot to be desired. These are:

"state approves secretly the use of deadly force against a collective, general target". (Ben-Yehuda N.).

"state terrorism is a system of arbitrary acts of violence committed by a government toward its own people to more easily rule over and dominate them". (Bowen G.).

"life threatening violence meant to not just eliminate its direct victims but also to terrorize others into acceptable behaviour". (Brockett C.).

"The application of extreme physical and psychological coercion on target populations in order to promote actor's objectives. Terror/ism is considered to be a form of war". (Buchanan P.L.).

help nor a hindrance and 20 replies indicated that it was in some respects both a help and hindrance. Two of the 120 were left blank.

¹⁴⁴⁷ Seventy three of the responses to question 4 answered 'Yes' and a corresponding 42 replied 'No'. Five respondents failed to answer the question.

¹⁴⁴⁸ Ultimately this is a matter of opinion. In addition there are a few authors who make references to other definitions elsewhere where the answer is not so clear. N. Chomsky for example notes 'The definitions given in the US codes, the US Army Handbooks, international conventions (e.g. the UN General Assembly Resolution of 1986), and adds the relevant section from the US Code. Here an: "'act of terrorism' means an activity that -(A) involves a violent act or an act dangerous to human life that is a violation of the criminal laws of the United States or any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; and (B) appears to be intended (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by assassination or kidnapping." (United States Code Congressional and Administrative News, 98th Congress, Second Session, 1584, Oct. 19, volume 2; par. 3077, 98 STAT. 2707; West Publishing Co., St. Paul, Minn.), before writing "Not perfect, but it will do". R.R. Ludwikowski, J.J. Paust and A. Roberts make reference to definitions in articles but their choices are not clear. Ross writes that "With some minor adjustments, I like Schmid's 1983 definition" but he does not mention them.

"An incident(s) involving the premeditated use, or threat of use, of extra-normal violence or force to gain a political objective through intimidation or fear". (Cauley J.).

"The combined use and threat of violence, planned and prepared in secret, against one group of targets (victims; targets of violence) in order to compel compliance or allegiance from a separate group(s) of targets (targets of demands, explicit or implicit) and to impress a wider audience (target of attention)." (Crelinsten R.).

"Terrorism is an act of violence intended to terrorize (inspire terror)". (Dinstein Y.).

"commission of (or threat to commit) acts of unlawful violence with a view to influencing the political behaviour of citizens (Approximately)". (George A.).

"general dictionary : a mode of governing or opposing government by intimidation. (I have sometimes used the CIA and US army definitions of terrorism, which are just windy elaborations of the basic definition)". (Herman E.S.).

"Violent actions against individuals and groups by agents acting on the direction of the regime in power" (Kieh G.).

"Deliberate use of violence against non-combatants (in war) or civilians (in peacetime) to influence political behaviour or deter political action by civilians or their leaders" (Kiernan B.).

"An "action of violence of which the psychological effects are out of proportion to the purely physical results" (Raymond Aron), carried out to produce certain political consequences". (Maley W.).

"arbitrary governmental violence used with the intent of intimidating opposition". (McCamant J.).

"The use of systematic violence to intimidate a population to accept the power of corporate and political elites". (Petras J.).

"Acts collectively intended to produce a psychological state of fear and uncertainty within the general population". (Premo D.).

"Acts in legal "time of peace" which, if committed when the law of war applied, would be "war crimes"". (Rubin A.P.).

"Illegal acts (defined by state/civil codes) unleashed upon the citizenry when the latter are usually denied due process of civil courts, thereby subject to military courts and military law". (Scarpaci J.)

"acts or threats of violence directed at the public at large to achieve political ends". (Schiff F.).

"Terrorism is an anxiety -inspiring method of repeated violent action, employed by (semi-) clandestine individual, group, or state actors, for idiosyncratic, criminal, or political reasons, whereby- in contrast to assassination- the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators. Threat -and violence- based communication processes between terrorist (organization), (imperilled) victims, and main targets are used to manipulate the main target audience(s), turning it into a target of terror, a target of demands, or a target of attention, depending on whether intimidation, coercion, or propaganda is primarily sought"¹⁴⁴⁹ (Schmid A.P.) also used by Scharlau B.A.¹⁴⁵⁰

"terror is the large-scale and arbitrary use or credible threat of severe physical force by organs of government against conforming as well as non conforming individuals or groups, which is felt as incomprehensible fear". (Shernock S.K.).

"Actions on the threat of actions, normally violent and hurtful, other than those imposed with due process for the legitimate enforcement of

¹⁴⁴⁹ Schmid A.P. and Jongman A.J. *Political Terrorism: A new guide to actions, authors, concepts and databases*. (SWIDOC. Amsterdam. 1988.).p28

¹⁴⁵⁰ Scharlau wrote 'Schmid/Jongman, 1988. This occurs in an article (still awaiting completion) on international relations and terrorism'.

the law, that have the effect of creating fear or "terror" in a population" (Solo R.).

"terrorism is the purposeful act or threat of violence to create fear and/or compliant behaviour in a victim and/or audience of the act or threat" Stohl and Lopez's definition was cited by Howard¹⁴⁵¹, one of the anonymous replies¹⁴⁵², and Hart J.¹⁴⁵³. Another author cited:

Michael Stohl's "the purposeful act or threat of violence designed to create fear and compliance by the victims and other observers of this coercive behaviour". (Weisfelder R.F.).

"aggression". (Tittmar H.).

"Terror is the use of (or threat of use) physical or non-physical force and coercion to influence or control the actions of others. It is *frequently designed to disrupt on going social reality and expectations*". (Vanderpool C.).

"government orchestrated or tolerated (but knowingly) actions against its own citizens who received no legal protection or due process". (Watson C.A.).

"premeditated violence to create a climate of terror; directed at a wider audience than immediate victims; inherently involves attacks on random and symbolic targets, including civilians; seen by society in

¹⁴⁵¹ Howard declared "I wrote an article on Kenya in Schlapentokh et al. I used the Stohl + Lopez definition, which I still find satisfactory" "Howard refers to Stohl M. and Lopez G.A. 'Introduction' in Stohl M. and Lopez G.A. (eds.). *The State as Terrorist: The Dynamics of Global Violence and Repression*. (Greenwood Press. Westport. Conecticut. 1984.).pp3-10.p7-8. Howard R.E. 'Repression and State Terror in Kenya 1982-1988' in Bushnell P.T., Shlapentokh V., Vanderpool C.K. and Sundriam J. (eds.) *State Organized Terror* (Westview Press. Oxford. 1992.).pp77-98.p78.

¹⁴⁵² An anonymous author who wrote 'See attached from a (text) book I've used other definitions but this gives a sense of my perspective', uses Stohl and Lopez "the purposeful act or threat of violence to create fear and/or compliant behaviour in a victim and /or audience of the act or threat"

¹⁴⁵³ Hart J. wrote "The editors- Michael Stohl + George Lopez provided their own definition which I found reasonable". Reference to Hart J.A. 'U.S. Interventions in Latin America since World War II' in Stohl. M and Lopez G.A. *Terrible Beyond Endurance* (Greenwood Press. Westport, Connecticut.1988) pp59-84.p60. Stohl's definition is that found within Stohl M. 'National Interests and State Terrorism in International affairs'. *Political Science*. Vol. 369.July 1984.).

which they occur as extra-normal, causing feelings of outrage; normally used as weapon to influence or control political behaviour". (Wilkinson P.).

Question 5 was split into four parts, labelled a, b,c, and d. Question 5a asked "Do you think that such 'terror/ist' violence by those in power is historically earlier, more recent, just as recent than such violence by insurgents?", to which 115 authors replied. Thirty-seven percent ticked the box marked 'earlier'. Three percent indicated that it was "more recent" than such violence by insurgent groups, and 23% percent indicated than it was 'just as recent' a phenomenon. The remaining 36% ticked the box marked that labelled "cannot say".¹⁴⁵⁴

In answering the question 5b which asked "Do you think that such 'terror/ist' violence by those in power occurs more, less, or just as frequently in today's world than by insurgents?", 48% of the 118 respondents answered "more frequently" with only 12% answered "less frequently", 17% indicated "just as" frequently and 23% "cannot say".¹⁴⁵⁵

Question 5c asked "Do you think that such 'terror/ist' violence by those in power has occurred more, less, just as often throughout history?". To which 55% of the 121 replies (including one author who marked three boxes) indicated "more often", compared to only 4% "less often". Thirteen percent answered "just as" often throughout history and 25% answered "cannot say".¹⁴⁵⁶

Question 5d was "Do you think that such 'terror/ist' by those in power is more, less, or just as important an area of study than such violence by insurgents?", to which 119 responded. Of these 27.5% who indicated that

¹⁴⁵⁴ Forty three respondents to question 5(a) indicated that they believed such 'terror/ist' violence by those in power is historically "earlier than" such violence by insurgents, 4 indicated that they believed such 'terror/ist' violence by those in power is historically "more recent" and 27 indicated that is "just as recent" as such insurgent violence. Forty one indicated that they could not say one way or another, and 5 failed to answer the question.

¹⁴⁵⁵ Fifty-seven respondents to question 5(b) answered "more frequently" with only 14 answering "less frequently", 20 answered "just as" frequently and 27 answered 'cannot say'. Two were left blank.

¹⁴⁵⁶ Sixty-seven replies to question 5(c) indicated "more often", compared to only 5 "less often", 16 answered 'just as' often and 30 answered 'cannot say'. Three left the boxes blank.

it was "more important", only 3% claimed that it was "less important", and 62% indicated that state terror/ism is "just as" important an area of study than such violence by insurgents. The remaining 7.5% ticked the box labelled 'cannot say'.¹⁴⁵⁷

Question 6 read "Would you say that more, less or just as much, academic work has been done on 'terror/ist' violence by those in power than on that by insurgents?". Only 10% of the 117 respondents indicated that they believed that "more" academic work has been done on the topic of "'terror/ist' violence by those in power than on that by insurgents" while two thirds indicated that they believed that less academic work has been done on the topic of "'terror/ist' violence by those in power than on that by insurgents". Seven percent indicated that "just as" much had been done, and 16% had ticked the box entitled "cannot say".¹⁴⁵⁸

After listing twenty one separate things which authors had labelled (or implied) as 'state terrorism', Question 7 asked "Would any of the following (without reservations) constitute such 'terror/ism'". It also left space for the respondents to make comments following a secondary question "Are there any qualifications you would like to add to enable such phenomena to constitute 'terror/ism?'. Despite the comments made within the space provided and beside the list, the quantitative results are as follows. For simplicity's sake the items will be listed with the quantitative answers given next to them as both a percentage of the potential 120 respondents and as an absolute number:

Genocide 67% (80)

Torture 67% (80)

The possession of nuclear weapons 7.5% (9)

The possession of biological weapons 8% (10)

¹⁴⁵⁷ Seventy four of the 119 respondents to question 5(d), indicated that state terror/ism is "just as" important an area of study than such violence by insurgents. Only 3 claimed that it was "less important", compared to 33 who indicated that it was "more important". The remaining 9 ticked the box labelled 'cannot say' and one questionnaire was left blank.

¹⁴⁵⁸ Seventy eight of the replies to question 6 indicated that they believed that less academic work has been done on the topic of "'terror/ist' violence by those in power than on that by insurgents". In contrast only 12 indicated that they believed that more academic work has been done on the topic, with 8 indicating that "just as" much had been done, and 19 ticking the box entitled "cannot say". Three were left blank.

The possession of chemical weapons 9% (11)
 The threat to use nuclear weapons 24% (29)
 The threat to use biological weapons 23% (28)
 The threat to use chemical weapons 23% (28)
 The use of nuclear weapons 23% (28)
 The use of biological weapons 27%(32)
 The use of chemical weapons 27.5%(33)
 Coercive diplomacy 9%(11)
 Acts of violence that deliberately target the enemy's non-combatants
 65% (78)
 Assassination of political leaders 67% (80)
 War crimes 38% (46)
 Death squads 87% (104)
 The 'disappeared' 83% (100)
 Repression 29%(35)
 Violations of international law 9% (11)
 Human rights violations 34% (40)
 Hunger 13% (16)

In reply to question 8, "Can counter-terrorism ever be labelled as 'terror/ism', 11% of those 108 respondents answered "No", and a corresponding 89% answered "Yes" 1459.

Question 9 asked "Can legal acts of violence carried out by those in power within the area of domestic jurisdiction ever be labelled as 'terror/ism'?". Sixteen percent of the 105 replies indicated "No", 84% answered "Yes" 1460.

Question 10 asked "Can illegal acts of violence carried out by those in power within the area of domestic jurisdiction ever be labelled 'terror/ism' ", to which 114 answers were received. Three percent of these indicated "No", the other 97% of the replies were "Yes" 1461.

1459 Ninety six of 108 respondents answered "Yes", with only 12 answering "No". Twelve respondents failed to answer this question.

1460 Eighty eight respondents to question 9, indicated that 'legal acts of violence carried out by those in power within the[ir] area of domestic jurisdiction' can 'be labelled as 'terror/ism' ', 17 indicated that they could not. Fifteen failed to reply to this question.

1461 To question 10, 111 indicated that 'illegal acts of violence carried out by those in power within the area of domestic jurisdiction' can never 'be labelled 'terror/ism' '. Three indicated that they could not, and 6 failed to answer.

Whilst in response to question 11 which asked, "Can acts or threats of violence carried out directly by agents of one power outside its area of domestic jurisdiction ever be labelled 'terror/ism'?", 5% of the 114 replies indicated "No", with the corresponding 95% indicating "Yes"¹⁴⁶².

Finally in reply to question 12 which asked "Do you find the following 'universal' definition of terrorism acceptable?", 52% of those 99 answers indicated "No", the other 48% stated "Yes"¹⁴⁶³. The definition was, terrorism is:

"the deliberate threat or use of violence for political purposes by either non-state actors anywhere or the state outside its area of jurisdiction when such actions are intended to influence a target(s) wider than the immediate non-combatant victim(s); or the use of such purposive violence by the state (when it claims) the authority when its actions are either illegal or legal but fail to allow the individual victim the opportunity to avoid such violence through the secret, vague or indiscriminate nature of the enabling legislation".

Question 12 also allowed for the respondents to make comments on this proposed definition by adding the secondary question, "What alterations/qualifications would you want to add?". Section 2 which contained only one question 13, also provided space for authors to: "revise any of your answers; expand any of your answers, (e.g. those to the 'closed' questions 1,2,5,6); or make any other comments or suggestions on the topic?". The most detailed of which are found within the thesis especially in the chapters on the State and the conclusion.

¹⁴⁶² To question 11, 108 indicated that 'acts or threats of violence carried out directly by agents of one power outside its area of domestic jurisdiction' could 'be labelled 'terror/ism' 6 indicated that they could not. Six failed to answer.

¹⁴⁶³ To question 12, 48 replied 'Yes' and 51 respondents replied 'No'. Twenty one failed to answer.

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